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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-40209

Heliogen, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**85-4204953**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
130 West Union Street, Pasadena California	**91103**
(Address of Principal Executive Offices)	(Zip Code)

(626) 720-4530

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.0001 par value per share	HLGN	New York Stock Exchange
Warrants, each whole warrant exercisable for shares of Common stock at an exercise price of $11.50 per share	HLGN.W	New York Stock Exchange

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The registrant had 188,749,042 shares of common stock outstanding as of May 16, 2022.

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Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We have based these forward-looking statements on our current expectations and projections about future events. All statements, other than statements of present or historical fact included in this Quarterly Report on Form 10-Q regarding our future financial performance, as well as our strategy, future operations, financial position, estimated revenues, and losses, projected costs, prospects, plans and objectives of management are forward-looking statements. Any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" or the negative of such terms or other similar expressions. These forward-looking statements are based on management's current expectations, assumptions, hopes, beliefs, intentions and strategies regarding future events and are based on currently available information as to the outcome and timing of future events. We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control, incident to our business.

As a result of a number of known and unknown risks and uncertainties, our actual results or performance may be materially different from those expressed or implied by these forward-looking statements. Some factors that could cause actual results to differ include:

- our ability to recognize the anticipated benefits of the business combination (the "Business Combination") with Athena Technology Acquisition Corp ("Athena"), which may be affected by, among other things, our ability to grow and manage growth profitably;
- our financial and business performance, including risk of uncertainty in our financial projections and business metrics and any underlying assumptions thereunder;
- changes in our business and strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects and plans;
- our ability to execute our business model, including market acceptance of our planned products and services and achieving sufficient production volumes at acceptable quality levels and prices;
- changes in domestic and foreign business, market, financial, political, legal conditions and applicable laws and regulations;
- our ability to grow market share in our existing markets or new markets we may enter;
- our ability to achieve and maintain profitability in the future;
- our ability to access sources of capital to finance operations, growth and future capital requirements;
- our ability to maintain and enhance our products and brand, and to attract and retain customers;
- our ability to find new partners for product offerings;
- the success of strategic relationships with third parties;
- our ability to scale in a cost-effective manner;
- developments and projections relating to our competitors and industry;
- the impact of the COVID-19 pandemic, and Russia's invasion of Ukraine on our business, including, but not limited to, supply chain disruptions;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- our ability to find and retain critical employee talent and key personnel;

- the possibility that we may be adversely impacted by other economic, business, and/or competitive factors;
- the possibility that our remediation plan may not successfully address the underlying causes of the material weaknesses in our internal control over financial reporting;
- future exchange and interest rates;
- the outcome of any known and unknown litigation and regulatory proceedings; and
- other risks and uncertainties, including those disclosed under “Item 1A. Risk Factors” contained in Part I of our latest Annual Report on Form 10-K/A, and the risk factors and other cautionary statements contained in other filings that have been made or will be made with the Securities and Exchange Commission by the Company.

Given these risks and uncertainties, you should not place undue reliance on these forward-looking statements. Should one or more of the risks or uncertainties described in this Quarterly Report on Form 10-Q, or should underlying assumptions prove incorrect, actual results and plans could differ materially from those expressed in any forward-looking statements. Additional information concerning these and other factors that may impact the operations and projections discussed herein are disclosed under “Item 1A. Risk Factors” contained in Part I of our latest Annual Report on Form 10-K/A and in our periodic filings with the SEC. Our SEC filings are available publicly on the SEC’s website at *www.sec.gov*.

You should read this Quarterly Report on Form 10-Q with the understanding that our actual future results, levels of activity and performance as well as other events and circumstances may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

Part I - Financial Information

Item 1. Financial Information

Heliogen, Inc.
Condensed Consolidated Balance Sheets
($ in thousands, except share data)
(Unaudited)

	March 31, 2022	December 31, 2021
ASSETS		
Cash and cash equivalents	$ 63,615	$ 190,081
Investments, available-for-sale (amortized cost of $133,549 and $32,349, respectively)	128,269	32,332
Receivables	13,710	3,896
Prepaid and other current assets	7,263	874
Total current assets	212,857	227,183
Operating lease right-of-use assets	15,937	16,093
Property, plant, and equipment, net of accumulated depreciation of $1,055 and $707, respectively	4,636	4,102
Goodwill	1,111	4,204
Intangible assets, net of accumulated amortization of $37 and $27, respectively	4,063	147
Restricted cash	1,500	1,500
Other long-term assets	16,063	4,219
Total assets	**$ 256,167**	**$ 257,448**
LIABILITIES AND SHAREHOLDERS' EQUITY		
Trade payables	$ 2,294	$ 4,645
Contract liabilities	7,866	513
Contract loss provisions	34,188	397
Accrued expenses and other current liabilities	6,266	6,974
Total current liabilities	50,614	12,529
Debt, net of current portion	31	35
Operating lease liabilities, net of current portion	15,091	14,183
Warrant liability	10,537	14,563
Other long-term liabilities	2,591	2,080
Total liabilities	**78,864**	**43,390**
Commitments and contingencies (see Note 9)		
Shareholders' equity		
Common stock, $0.0001 par value; 500,000,000 shares authorized; 186,121,281 shares issued and outstanding (excluding restricted shares of 399,513) as of March 31, 2022 and 183,367,037 shares issued and outstanding (excluding restricted shares of 481,301) as of December 31, 2021	19	18
Additional paid-in capital	403,216	380,624
Accumulated other comprehensive loss	(384)	(4)
Accumulated deficit	(225,548)	(166,580)
Total shareholders' equity	**177,303**	**214,058**
Total liabilities and shareholders' equity	**$ 256,167**	**$ 257,448**

The accompanying notes are an integral part of these condensed consolidated financial statements.

Heliogen, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
($ in thousands, except per share and share data)
(Unaudited)

	Three Months Ended March 31,	
	2022	**2021**
Revenue	$ 3,539	$ 516
Cost of revenue:		
Cost of revenue	3,524	516
Provision for contract losses	33,737	—
Total cost of revenue	37,261	516
Gross loss	(33,722)	—
Operating expenses:		
Selling, general, and administrative	20,395	2,152
Research and development	9,605	1,608
Total operating expenses	30,000	3,760
Operating loss	(63,722)	(3,760)
Interest income, net	194	40
Gain (loss) on warrant remeasurement	4,026	(303)
Other expense, net	(76)	(33)
Net loss before taxes	(59,578)	(4,056)
Income tax benefit	610	—
Net loss	(58,968)	(4,056)
Other comprehensive loss, net of taxes		
Unrealized losses on available-for-sale securities	(379)	(12)
Cumulative translation adjustment	(1)	—
Total comprehensive loss	$ (59,348)	$ (4,068)
Loss per share		
Loss per share – Basic and Diluted	$ (0.32)	$ (0.42)
Weighted average number of shares outstanding – Basic and Diluted	184,031,015	9,763,675

The accompanying notes are an integral part of these condensed consolidated financial statements.

Heliogen, Inc.
Condensed Consolidated Statements of Convertible Preferred Stock and Shareholders' Equity (Deficit)
($ in thousands, except share data)
(Unaudited)

	Convertible Preferred Stock		Shareholders' Equity (Deficit)					
			Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount				
December 31, 2020	**58,554,536**	**$ 45,932**	**4,053,489**	**$ 4**	**$ 1,306**	**$ —**	**$ (29,172)**	**$ (27,862)**
Retroactive application of Exchange Ratio	59,332,446	—	4,107,339	(3)	3	—	—	
December 31, 2020, as adjusted	**117,886,982**	**45,932**	**8,160,828**	**1**	**1,309**	**—**	**(29,172)**	**(27,862)**
Net loss	—	—	—	—	—	—	(4,056)	(4,056)
Other comprehensive loss	—	—	—	—	—	(12)	—	(12)
Share-based compensation	—	—	—	—	211	—	—	211
Shares issued for stock options exercised	—	—	2,173,524	—	214	—	—	214
Shares issued for stock warrants exercised	—	—	199,315	—	30	—	—	30
March 31, 2021	**117,886,982**	**$ 45,932**	**10,533,667**	**$ 1**	**$ 1,764**	**$ (12)**	**$ (33,228)**	**$ (31,475)**
December 31, 2021	**—**	**—**	**183,367,037**	**$ 18**	**$ 380,624**	**$ (4)**	**$ (166,580)**	**$ 214,058**
Net loss	—	—	—	—	—	—	(58,968)	(58,968)
Other comprehensive loss	—	—	—	—	—	(380)	—	(380)
Share-based compensation	—	—	—	—	12,982	—	—	12,982
Shares issued for stock options exercised	—	—	2,754,244	1	271	—	—	272
Project Warrants and Collaboration Warrants Compensation (see Note 3)	—	—	—	—	9,339	—	—	9,339
March 31, 2022	**—**	**$ —**	**186,121,281**	**$ 19**	**$ 403,216**	**$ (384)**	**$ (225,548)**	**$ 177,303**

The accompanying notes are an integral part of these condensed consolidated financial statements.

Heliogen, Inc.
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2022	**2021**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (58,968)	$ (4,056)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	760	54
Share-based compensation	12,982	211
(Gain) loss on warrant remeasurement	(4,026)	303
Provision for contract losses, net	33,766	—
Deferred income taxes	(611)	—
Non-cash operating lease expense	428	51
Other non-cash operating activities	101	34
Changes in assets and liabilities:		
Receivables	(9,693)	(37)
Prepaid and other current assets	(3,802)	(201)
Other long-term assets	(575)	—
Trade payables	154	275
Accrued expenses and other current liabilities	302	278
Contract liabilities	6,811	2,514
Operating lease liabilities	(317)	(51)
Other long-term liabilities	15	—
Net cash used in operating activities	(22,673)	(625)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures	(1,360)	(162)
Purchases of available-for-sale investments	(122,468)	(27,634)
Maturities of available-for-sale investments	21,100	—
Net cash used in investing activities	(102,728)	(27,796)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from SAFE instruments, net of issuance costs of $18.2 thousand	—	73,173
Transaction costs paid related to the Business Combination with Athena	(1,274)	—
Repayments on Paycheck Protection Program loan	—	(411)
Proceeds from exercise of stock options	209	214
Proceeds from exercise of common stock warrants	—	30
Net cash (used in) provided by financing activities	(1,065)	73,006
(DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	(126,466)	44,585
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, BEGINNING OF THE PERIOD	191,581	18,334
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, END OF THE PERIOD	$ 65,115	$ 62,919

The accompanying notes are an integral part of these condensed consolidated financial statements.

Heliogen, Inc.
Notes to the Condensed Consolidated Financial Statements

1. Organization and Basis of Presentation

Background

Heliogen, Inc. and its subsidiaries (collectively, "Heliogen" or the "Company"), is involved in the development and commercialization of next generation concentrated solar energy. We are developing a modular, A.I.-enabled, concentrated solar energy thermal energy plant that will use an array of mirrors to reflect sunlight and capture, concentrate, store and convert it into cost-effective energy on demand. Unless otherwise indicated or the context requires otherwise, references in our consolidated financial statements to "we," "our," "us" and similar expressions refer to Heliogen.

Basis of Presentation

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC"), and include the accounts of Heliogen and the subsidiaries it controls. All material intercompany balances are eliminated in consolidation. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in Heliogen's Annual Report on Form 10-K/A for the year ended December 31, 2021 filed on May 23, 2022.

Certain information and disclosures normally included in annual financial statements have been condensed or omitted in these interim financial statements. In our opinion, the unaudited interim financial statements have been prepared on the same basis as the annual financial statements and include all adjustments, consisting of only normal recurring adjustments, necessary for fair presentation. The results of operations for the three months ended March 31, 2022, are not necessarily indicative of the results of operations to be expected for the full year ended December 31, 2022.

The condensed consolidated balance sheet at December 31, 2021, has been derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by U.S. GAAP for complete financial statements.

Athena Business Combination

On December 30, 2021 (the "Closing Date"), Heliogen, Inc., a Delaware corporation ("Legacy Heliogen"), Athena Technology Acquisition Corp., a Delaware corporation ("Athena"), and Athena's direct, wholly owned subsidiary, consummated the closing of transactions contemplated by the business combination agreement, dated July 6, 2021, by and among Athena, Merger Sub, and Legacy Heliogen (the "Business Combination").

The Business Combination was accounted for as a reverse recapitalization in accordance with Accounting Standards Codification ("ASC") 805, *Business Combinations*, pursuant to which Athena was treated as the "accounting acquiree" and Legacy Heliogen as the "accounting acquirer" for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination was treated as Legacy Heliogen issuing equity for the net assets of Athena, followed by a recapitalization. The consolidated assets, liabilities, and results of operations of Legacy Heliogen comprise the historical consolidated financial statements of the post combination company, and Athena's assets, liabilities and results of operations are consolidated with Legacy Heliogen beginning on the acquisition date. Accordingly, for accounting purposes, the condensed consolidated financial statements of the post combination company represent a continuation of the historical consolidated financial statements of Legacy Heliogen, and the net assets of Athena are stated at historical cost, with no goodwill or other intangible assets recorded.

In accordance with accounting guidance applicable to these circumstances, the equity structure has been recast in all comparative periods up to the Closing Date to reflect the number of shares of the Company's common stock, $0.0001 par value per share, issued to Legacy Heliogen' stockholders in connection with the Business Combination. As such, the shares and corresponding capital amounts and earnings per share related to Legacy Heliogen redeemable convertible preferred stock, common stock, warrants, options, and restricted stock units prior to the Business Combination have been

retroactively recast as shares reflecting the exchange ratio of 2.013 (the "Exchange Ratio") established in the Business Combination.

Emerging Growth Company Status

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. Subject to certain conditions set forth in the JOBS Act, if, as an emerging growth company, we intend to rely on such exemptions, we are not required to, among other things: (a) provide an auditor's attestation report on our system of internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002; (b) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009; and (c) disclose certain executive compensation-related items such as the correlation between executive compensation and performance and comparisons of the Chief Executive Officer's compensation to median employee compensation. We have elected not to use the extended transition period for complying with any new or revised financial accounting standards, and as such, we are required to adopt new or revised standards at the same time as other public companies.

We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year: (a) following March 19, 2026, the fifth anniversary of our IPO; (b) in which we have total annual gross revenue of at least $1.07 billion; or (c) in which we are deemed to be a "large accelerated filer", which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th, and (ii) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and the accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to inputs used to recognize revenue over time, accounting for income taxes, the fair values of share-based compensation, lease liabilities, warrant liabilities, and long-lived asset impairments. Despite our intention to establish accurate estimates and reasonable assumptions, actual results could differ materially from such estimates and assumptions.

Reclassifications

Certain immaterial prior period amounts, specifically warrant remeasurement and intangibles, have been reclassified to conform to current period presentation. All dollar amounts (other than per share amounts) in the following disclosures are in thousands of United States dollars, unless otherwise indicated.

Accounting Standards

In August 2020, the Financial Accounting Standards Board issued Accounting Standards Update ("ASU") No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 2020-06"). The amendments eliminate two of the three accounting models that require separate accounting for convertible features of debt securities, simplify the contract settlement assessment for equity classification, require the use of the if-converted method for all convertible instruments in the diluted earnings per share calculation and expand

disclosure requirements. We adopted ASU 2020-06 on January 1, 2022 with no impact on our condensed consolidated financial statements.

Subsequent Events

We have evaluated subsequent events, if any, that would require an adjustment to the condensed consolidated financial statements or require disclosure in the notes to the condensed consolidated financial statements through the date of issuance of the condensed consolidated financial statements. Where applicable, the notes to these condensed consolidated financial statements have been updated to discuss all significant subsequent events which have occurred.

2. Revenue

Disaggregated Revenue

We disaggregate revenue into the following revenue categories:

	Three Months Ended March 31,	
$ in thousands	**2022**	**2021**
Project revenue	$ 1,991	$ —
Services revenue	53	516
Revenue from contracts with customers	2,044	516
Grant revenue	1,495	—
Total revenue	$ 3,539	$ 516

Project revenue consists of amounts recognized under contracts with customers for the development, construction and delivery of commercial-scale concentrated solar energy facilities. Services revenue consists of amounts recognized under contracts with customers for the provision of engineering, R&D or other similar services in our field of expertise. Revenue recognized during 2022 and 2021 includes commercial, non-governmental customers in Australia and Europe.

Under a commercial-scale demonstration agreement (the "Project Agreement") executed with a customer in March 2022, Heliogen will complete the engineering, procurement, and construction of a new 5 MWe concentrated solar energy facility to be built in Mojave, California (the "Facility") for the customer's use in testing, research and development. The Facility is expected to serve as a fully operational model for the customer's use in demonstrating the Company's technology and product offerings at a commercial scale to aid in the development, engineering, and construction of larger, commercial scale facilities under separate agreements between the Company and the customer or other third-party customers. Pursuant to the Project Agreement, the customer will pay up to $50.0 million to Heliogen to complete the Facility. The total transaction price for the Project Agreement is $45.5 million reflecting a reduction in contract price for the fair value of the Project Warrants (defined and discussed further in Note 3) granted to the customer in connection with the Project Agreement. The Project Agreement modified and replaced a limited notice to proceed executed in October 2021 with the same customer under which $0.9 million of revenue was recognized in 2021. The Company recognized a contract loss of $32.9 million during the three months ended March 31, 2022 related to the Project Agreement. The contract loss recognized during the first quarter reflects the Company's estimate as of March 31, 2022 of the full expected loss on the design, engineering, and construction of the Facility given consideration expected to be realized under the Project Agreement (net of the fair value of the Project Warrants) and the Company's award from the U.S. Department of Energy's Solar Energy Technology Office (the "DOE Award"). During the three months ended, the Company recognized grant revenue and costs of grant revenue under the DOE Award of $1.5 million related to costs incurred during the period that are reimbursable under the DOE Award.

Performance Obligations and Contract Liabilities

Revenue recognized under contracts with customers relate solely to the performance obligations satisfied in 2022 with no revenue recognized from performance obligations satisfied in prior periods. On March 31, 2022, we had

approximately $43.8 million of transaction price allocated to remaining performance obligations through 2025. During the three months ended March 31, 2022, we recognized provisions for contract losses of $33.7 million related to three contracts as estimated costs to satisfy performance obligations for the remainder of those contracts exceeded consideration to be received from the customers. We recognized no provisions for contract losses during the three months ended March 31, 2021.

As of March 31, 2022 and December 31, 2021, our contract liabilities were $7.9 million and $0.5 million, respectively. Activity included in contract liabilities during the first quarter of 2022 consisted of additions for deferred revenue of $9.7 million offset by revenue recognized of $2.0 million, and other activity of $0.3 million.

We recognized revenue of $0.2 million for the three months ended March 31, 2022, which was previously included in the contract liability balance at December 31, 2021.

Accounts Receivable

As of March 31, 2022, our receivables of $13.7 million included $10.6 million accounts receivables related to our contracts with customers, which consisted of trade receivables of $0.9 million and unbilled receivables of $9.7 million. Additionally, our receivables included $2.9 million related to amounts reimbursable to the Company under the DOE Award.

As of December 31, 2021, our receivables of $3.9 million included $2.1 million accounts receivables related to our contracts with customers which consisted of trade receivables of $0.9 million and unbilled receivables of $1.2 million. Additionally, our receivables included $1.4 million related to amounts reimbursable to the Company under the DOE Award.

3. Warrants

Public Warrants and Private Warrants

The Company's warrant liability as of March 31, 2022 includes public warrants (the "Public Warrants") and private placement warrants (the "Private Warrants"). The Company has the ability to redeem outstanding Public Warrants, commencing 90 days after March 18, 2022, the date the Public Warrants become exercisable and prior to their expiration, at a price of $0.01 per warrant, provided that the last reported sales price of the common stock equals or exceeds $18.00 per share for any 20 trading days within a 30 trading-day period ending on the third trading day prior to the notice date of redemption. In addition, the Company has the ability to redeem all (but not less than all) of the outstanding Public Warrants and Private Warrants, at a price of $0.10 per warrant if certain conditions are satisfied, but primarily the last reported sale prices of the Company's common stock equals or exceeds $10.00. The Company evaluated the Public Warrants and Private Warrants and concluded that a provision in the underlying warrant agreement dated March 16, 2021, by and between Athena and Continental Stock Transfer & Trust Company, related to certain tender or exchange offers precludes both the Public Warrants and Private Warrants from being accounted for as components of equity. As both the Public Warrants and Private Warrants meet the definition of a derivative, they are recorded on the Condensed Consolidated Balance Sheets as liabilities and measured at fair value at each reporting date, and the change in fair value is reported on the Condensed Consolidated Statements of Operations and Comprehensive Loss.

Project Warrants and Collaboration Warrants

In connection with the concurrent execution of the Project Agreement and additionally a collaboration agreement (the "Collaboration Agreement") with a customer in March 2022, the Company issued warrants permitting the customer to purchase in the aggregate approximately 4.56 million shares of the Company's common stock at an exercise price of $0.01 per share. These warrants expire upon the earlier of a change in control of the Company or March 28, 2027. Of these warrants, (i) 0.91 million warrants vest pro rata with certain payments required to be made by the customer under the Project Agreement (the "Project Warrants"), (ii) 1.825 million warrants vested immediately upon execution of the Collaboration Agreement and (iii) 1.825 million warrants will vest based on the customer reaching certain specified performance goals under the Collaboration Agreement relating to towers contracted ((ii) and (iii) collectively the

"Collaboration Warrants"). The fair value of both the Project Warrants and Collaboration Warrants is $4.96 per warrant based on the closing price of the Company's shares on March 28, 2022 less the exercise price.

The Company evaluated the Project Warrants and the Collaboration Warrants under ASC 718 as consideration payable to a customer or non-employees and concluded them to be equity-classified. For the Project Warrants, the total consideration payable to the customer of approximately $4.5 million reduced the transaction price associated with the customer's contract and the Company recognized $0.2 million as an increase to additional paid-in-capital related for the Project Warrants to reflect the attribution of the Project Warrants' fair value in a manner similar to revenue recognized under the customer's contract. As of March 31, 2022, none of the Project Warrants have vested or become exercisable. For the Collaboration Warrants, the Company recognized a prepaid expense of $9.1 million, of which $2.6 million is classified as current and $6.5 million is classified as noncurrent, with a corresponding increase to additional paid-in-capital related to the Collaboration Warrants that immediately vested. This amount will be recognized ratably beginning April 2022 for marketing services to be provided over an estimated period of approximately three years as selling, general and administrative expense. Additional vestings of the Collaboration Warrants will be recognized as deferred contract acquisition costs upon execution of an applicable customer contract as defined in the Collaboration Agreement and will be amortized to expense over the term of the applicable customer contract.

4. Acquisition

In September 2021, Heliogen acquired 100% of the equity interests of HelioHeat GmbH ("HelioHeat"), a private limited liability company in Germany engaged in the development, planning and construction of renewable energy systems and components, including a novel solar receiver (the "HelioHeat Acquisition").

The components of the fair value of consideration transferred are as follows ($ in thousands):

Cash paid at closing[(1)]	$	1,714
Contingent consideration[(2)]		2,009
Settlement of pre-existing relationship		45
Total fair value of consideration transferred	$	3,768

(1) Includes $0.5 million of cash paid to an escrow that becomes payable to the selling shareholders of HelioHeat to the extent the funds are not used to offset certain costs incurred for the assumed customer projects. The amount is being treated as consideration transferred as the release of the funds is likely to occur.
(2) No change in the fair value of the contingent consideration was identified or recorded during the three months ended March 31, 2022.

The following table summarizes the purchase price allocation as of the acquisition date and measurement period adjustments recognized during the three months ended March 31, 2022:

$ in thousands	As of December 31, 2021 Preliminary Valuation	Measurement Period Adjustments	As of March 31, 2022 Revised Valuation
Cash and cash equivalents	$ 30	$ —	$ 30
Prepaid and other current assets	33	—	33
Property, plant and equipment, net	6	—	6
Intangible asset	—	4,204	4,204
Goodwill	4,204	(3,093)	1,111
Total assets acquired	4,273	1,111	5,384
Accrued expenses and other current liabilities	74	—	74
Contract liabilities	390	—	390
Debt	41	—	41
Deferred tax liabilities	—	1,111	1,111
Total liabilities assumed	505	1,111	1,616
Net assets acquired	$ 3,768	$ —	$ 3,768

The Company recorded measurement period adjustments based on the valuation of the intangible asset related to developed technology associated with HelioHeat's solar receiver technology and the related deferred tax impact. The purchase price allocation resulted in the recognition of $1.1 million in goodwill, which includes measurement period adjustments, of which none is expected to be tax deductible. Goodwill represents the value expected to be received from the synergies of integrating HelioHeat's operations with Heliogen's operations to expand commercial opportunities and the assembled workforce in place. The purchase price allocation for the HelioHeat Acquisition was finalized as of March 31, 2022. As a result of the net impact of measurement period adjustments during the three months ended March 31, 2022, the Company recognized a deferred tax benefit of $0.6 million.

The fair value of the intangible asset was estimated using the replacement cost approach, which was based on Level 3 inputs. Significant valuation assumptions include management's estimated costs to reproduce HelioHeat solar receiver technology if the Company had developed the technology using its own resources, developer's profit margin based on estimated market participants' required margin, and an estimated discount for economic obsolescence. The intangible asset will be amortized over its estimated useful life of ten years.

5. Accrued Expenses and Other Current Liabilities

The following summarizes the balances of accrued expenses and other current liabilities:

$ in thousands	March 31, 2022	December 31, 2021
Payroll and other employee benefits	$ 523	$ 862
Professional fees	1,816	1,379
Research and development costs	2,023	1,895
Operating lease liabilities, current portion	1,287	2,240
Other accrued expenses	617	598
Total accrued expenses and other current liabilities	$ 6,266	$ 6,974

6. Share-Based Compensation

The Heliogen, Inc. 2021 Equity Incentive Plan (the "2021 Plan") aims to incentivize employees, directors and consultants who render services to the Company through the granting of stock awards, including options, SARs, restricted stock awards, restricted stock unit ("RSU") awards, performance awards, and other stock-based awards.

During the three months ended March 31, 2022, we granted 865,324 RSU awards at a weighted average grant date fair value of $5.01 per share.

Our total share-based compensation expense, including the location where recognized within our Condensed Consolidated Statements of Operations and Comprehensive Loss, is as follows:

$ in thousands	Three Months Ended March 31,	
Operating expense classification	**2022**	**2021**
Selling, general, and administrative	$ 11,208	$ 148
Research and development	1,774	63
Total share-based compensation expense	$ 12,982	$ 211

7. Equity and Loss Per Share

Equity

As of March 31, 2022 and December 31, 2021, the Company had 10.0 million authorized shares of preferred stock, of which none were outstanding, at March 31, 2022 and December 31, 2021, respectively.

Loss per Share

Basic and diluted losses per share ("EPS") were as follows:

	Three Months Ended March 31,	
$ in thousands, except per share and share data	**2022**	**2021**
Numerator		
Net loss	$ (58,968)	$ (4,056)
Denominator		
Weighted-average common shares outstanding	183,949,912	9,763,675
Weighted-average impact of Project Warrants and Collaboration Warrants[(1)]	81,103	—
Denominator for basic EPS – weighted-average shares	184,031,015	9,763,675
Effect of dilutive securities	—	—
Denominator for diluted EPS – weighted-average shares	184,031,015	9,763,675
EPS – Basic	**$ (0.32)**	**$ (0.42)**
EPS – Diluted	**$ (0.32)**	**$ (0.42)**

(1) The Project Warrants and Collaboration Warrants each have a $0.01 exercise price and are assumed to be exercised when vested because common shares issued for little consideration upon exercise of these warrants are included in outstanding shares for the purposes of computing basic and diluted EPS.

As of March 31, 2022 and 2021, 37,429,240 and 33,055,931 outstanding stock options, respectively, were excluded from the calculation of EPS, as their impact would be anti-dilutive. As of March 31, 2022, 5,150,369 RSUs and 399,513 restricted shares issued upon the early exercise of unvested options have been excluded from the calculation of EPS, as

their impact would be anti-dilutive. Additionally, as of March 31, 2021, 1,374,446 of RSUs issued upon the early exercise of unvested options have been excluded from the calculation of EPS as their impact would be anti-dilutive.

As of March 31, 2022 and 2021, 8,566,666 and 229,841, respectively, outstanding common stock warrants were excluded from the calculation of EPS, as their impact would be anti-dilutive. As of March 31, 2021, outstanding preferred stock warrants were excluded from the calculation of EPS, as their impact, which would be equivalent to 381,306 shares of common stock on an "as converted" basis, would be anti-dilutive.

As of March 31, 2021, 117,886,982 outstanding convertible preferred shares were excluded from the calculation of EPS, as their impact, which would be equivalent to 121,038,967 shares of common stock on an "as converted" basis, would be anti-dilutive.

8. Related Party Transactions

Idealab

The Chief Executive Officer of our Company also serves as the chairman of the board of directors of Idealab. Idealab, a minority owner of Heliogen's outstanding voting stock through its wholly owned subsidiary, Idealab Holdings, is a party to a lease with the Company and provides various services through service agreements which include accounting, human resources, legal, information technology, marketing, public relations, and certain other operational support and executive advisory services. On occasion, Idealab may pay for certain expenses on our behalf, for which we reimburse Idealab. These expenses, include parking, postage, tax return preparation fees, patent fees, corporate filing fees, press release costs and other miscellaneous charges and are not considered related party transactions. No such expenses were paid on our behalf nor reimbursements made during the three months ended March 31, 2022 and March 31, 2021. All expenses or amounts paid to Idealab pursuant to these agreements are reported within selling, general, and administrative ("SG&A") in the Condensed Consolidated Statements of Operations and Comprehensive Loss.

In May 2021, Heliogen sub-leased a portion of its office space in Pasadena, CA to Idealab for a term of seven years. The sub-lease has an initial annual base rent of approximately $150,000 and contains a 3% per annum escalation clause. The sub-lease is subject to termination by either party upon six months prior written notice. Concurrently with the parties' entering into the sub-lease agreement, Idealab and Heliogen also entered into certain property management and shared facilities staffing agreements, which provide that Heliogen pays Idealab approximately $3,000 per month for building management services and approximately $13,000 per month for shared facilities staff and services (with proportional reimbursement of salaries). Such agreements are subject to termination right by either party with 90 days prior written notice. For the three months ended March 31, 2022, we recognized $39,000 in rental revenue reported within other expense, net in our Condensed Consolidated Statements of Operations and Comprehensive Loss.

The amounts charged to us or reimbursed by us under these agreements were as follows:

	Three Months Ended March 31,	
$ in thousands	**2022**	**2021**
Administrative services provided by Idealab	$ 133	$ 288

9. Commitments and Contingencies

We are involved in various claims and lawsuits arising in the normal course of business, including proceedings involving tort and other general liability claims, and other miscellaneous claims. We recognize a liability when we believe the loss is probable and reasonably estimable. We currently believe that the ultimate outcome of such lawsuits and proceedings will not, individually or in the aggregate, have a material effect on our condensed consolidated financial statements as of and for the three months ended March 31, 2022.

Although we cannot predict the outcome of legal or other proceedings with certainty, when it is probable that a loss has been incurred and the amount is reasonably estimable, U.S. GAAP requires us to accrue an estimate of the probable

loss or range of loss or make a statement that such an estimate cannot be made. We follow a thorough process in which we seek to estimate the reasonably possible loss or range of loss, and only if we are unable to make such an estimate do we conclude and disclose that an estimate cannot be made. Accordingly, unless otherwise indicated below in our discussion of legal proceedings, a reasonably possible loss or range of loss associated with any individual legal proceeding cannot be estimated.

On August 30, 2021, the Company's predecessor, Athena, received a litigation demand letter (the "Class Vote Demand") on behalf of Athena's stockholder FWD LKNG GDD Irrevocable Trust. The Class Vote Demand alleged that Athena violated Section 242(b)(2) of the Delaware General Corporation Law by not requiring separate class votes for holders of the Athena Class A and Class B Common Stock in connection with certain aspects of the business combination between Athena and Heliogen. According to the Class Vote Demand, a class vote was required under Section 242(b)(2) because consideration to the stockholders of Heliogen was to be paid in newly issued common stock, following elimination of the Class B Common Stock. While such separate class vote is not required pursuant to Section 242(b)(2) of DGCL, Athena concluded that such separate class vote was advisable to prevent disruption to the proposed transaction with Heliogen, and to avoid the delay and expense of potential litigation and amended its Form S-4 Registration Statement to reflect that change. On January 20, 2022, the stockholders' counsel asserted entitlement to an award of attorneys' fees to reflect the benefit it purportedly obtained for all Athena stockholders. This matter was resolved in March 2022 with final settlement paid in April 2022 and no material impact to our financial condition or results of operations.

10. Fair Value of Financial Instruments

Fair value is defined as the amount that would be received for selling an asset or paid to transfer a liability in an orderly transaction between market participants and is generally classified in one of the following categories:

Level 1 — Fair value is based on quoted prices for identical instruments in active markets.

Level 2 — Fair value is based on quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

Level 3 — Fair value is based on valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

The Company's assets and liabilities measured at fair value on a recurring basis are summarized in the following table by fair value measurement level:

$ in thousands

Description	Level	March 31, 2022	December 31, 2021
Assets:			
Investments	1	$ 133,153	$ 32,332
Liabilities:			
Public Warrants	1	$ 10,250	$ 14,167
Private Warrants	2	$ 287	$ 396

11. Investments

Investments in fixed maturity securities as of March 31, 2022 and December 31, 2021 are classified as available-for-sale and are summarized in the table below:

$ in thousands	March 31, 2022			December 31, 2021		
Investment type	**Amortized Cost**	**Unrealized (Losses)**	**Fair Value**	**Amortized Cost**	**Unrealized (Losses)**	**Fair Value**
Corporate bonds	$ 30,154	$ (139)	$ 30,015	$ 32,349	$ (17)	$ 32,332
Commercial paper	81,037	(226)	80,811	—	—	—
U.S. treasury bills	22,358	(31)	22,327	—	—	—
Total[(1)]	$ 133,549	$ (396)	$ 133,153	$ 32,349	$ (17)	$ 32,332

(1) As of March 31, 2022, approximately $128.3 million have original maturities of ninety-one to 365 days and is disclosed as investments on our Condensed Consolidated Balance Sheets, and approximately $4.9 million of U.S. treasury bills with a maturity over one year is included within other long-term assets on the Condensed Consolidated Balance Sheets. The total balance as of December 31, 2021, have original maturities of ninety-one to 365 days and is disclosed as investments on our Condensed Consolidated Balance Sheets.

There were no credit losses recognized for the three months ended March 31, 2022 and March 31, 2021, and no allowance for credit losses as of March 31, 2022 and December 31, 2021. There were no realized gains or losses on investments during the three months ended March 31, 2022 and March 31, 2021

12. Supplemental Cash Flow Information

Cash flows related to interest and leases and non-cash investing and financing activities were as follows:

	Three Months Ended March 31,	
$ in thousands	**2022**	**2021**
Supplemental disclosures:		
Cash paid for interest	$ —	$ 3
Non-cash investing and financing activities:		
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 201	$ —
Right-of-use asset removed upon lease termination	306	—
Fair value of Project Warrants and Collaboration Warrants recognized in equity	9,339	—
Capital expenditures incurred but not yet paid	19	22

The following reconciles cash, cash equivalents and restricted cash:

	March 31,	
$ in thousands	**2022**	**2021**
Reconciliation of cash, cash equivalents and restricted cash		
Cash and cash equivalents	$ 63,615	$ 62,919
Restricted cash	1,500	—
Total cash, cash equivalents and restricted cash	$ 65,115	$ 62,919

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following management's discussion and analysis ("MD&A") provides information that management believes is relevant to an assessment and understanding of our consolidated results of operations and financial condition, and includes forward-looking statements that involve risks, uncertainties and assumptions. The MD&A should be read in conjunction with our condensed consolidated financial statements and related notes included in Part I Item 1 in this Quarterly Report on Form 10-Q, and the section titled "Cautionary Note Regarding Forward-Looking Statements" included in the fore-part in this Quarterly Report on Form 10-Q.

Overview

Heliogen is a leader in next generation concentrated solar energy ("CSE") technology. We are developing a modular, A.I.-enabled, concentrated solar energy plant that will use an array of mirrors to reflect sunlight and capture, concentrate, store and convert it into cost-effective energy on demand. Our unique system will have the ability to cost-effectively generate and store thermal energy at very high temperatures. The ability to produce high-temperature heat, and the inclusion of thermal energy storage, distinguishes our solution from clean energy provided by typical photovoltaic ("PV") and wind installations which do not produce thermal energy and are only able to produce energy intermittently unless battery storage is added. The system will be configurable for several applications, including the carbon-free generation of clean power (electricity), industrial-grade heat (for use in industrial processes), and green hydrogen, based on a customer's needs.

We have developed innovations in the process of concentrating sunlight which we believe fundamentally improve the potential, to efficiently and cost effectively collect and deliver energy to industrial processes. We believe we will be the first technology provider with the ability to deliver cost-effective renewable energy capable of replacing fossil fuels used in industrial processes that require high temperature heat and/or nearly 24/7 operation. In addition, we believe our disruptive, patented design and A.I. technology will address a fundamental problem confronted by many renewable sources of energy: intermittency. An intermittent power supply does not match the continuous power demand of industry and the grid. Without storage, wind and PV-based renewable energy generation may rapidly fluctuate between over-supply and under-supply based on resource availability. As the grid penetration of intermittent resources increases, these fluctuations may become increasingly extreme. We believe our technology will contribute to solving this problem. Our solar plants will have the ability to store very high temperature energy in solid media. This energy will then be dispatchable, including during times without sunlight, to cost-effectively deliver near 24/7 carbon-free energy in the form of heat, electric power or green hydrogen fuel.

The three use categories will be configured as follows, forming the backbone of three business lines:

HelioHeat — The production of heat or steam for use in industrial processes will be enabled by the baseline system.

HelioPower — With the baseline system as the foundation, the addition of a turbine generator system will then enable power generation.

HelioFuel — Building on the Power system described above, hydrogen fuel production will be enabled by further adding an electrolyzer system to the baseline system.

Our technological innovations will enable the delivery of our HelioHeat, HelioPower and HelioFuel solutions to customers. HelioHeat plants will produce carbon-free heat (e.g. process steam or hot air) to support industrial processes. HelioPower plants will deliver solar thermal energy to a heat engine to produce electrical power. HelioFuel plants will couple a HelioPower plant with an electrolyzer to produce green Hydrogen fuel. All three solutions will be enabled by Heliogen's proprietary heliostat design and artificial intelligence technology, and will integrate TES to enable operation nearly 24/7, overcoming the intermittency of other solar energy technologies.

For each of the three above solutions, we are offering multiple support models to customers looking to deploy Heliogen's technology:

- Contracting with owner-operators to build turnkey facilities that deploy Heliogen's technology (Heliogen will contract with engineering, procurement and construction ("EPC") partners for constructing the facility);
- Selling heliostats (and associated software control systems) to owner-operators and/or EPC contractors;
- Providing asset maintenance support services during operation, for completed facilities that use Heliogen's technology; and

- Providing project development support services to help customers advance readiness to break ground in advance of final investment decisions.

In the future, we will also be prepared to offer Heliogen's IP through a licensing model to third parties interested in manufacturing and installing the hardware.

Recent Developments

Customer Contracts

On March 28, 2022, Heliogen entered into a series of commercial agreements (collectively, the '"Agreements") with Woodside Energy (USA) Inc. ("Woodside"), a wholly-owned subsidiary of leading Australian energy producer Woodside Petroleum Ltd. for the commercial-scale demonstration and deployment of Heliogen's AI-enabled concentrated solar energy technology in California and the marketing of Heliogen's technology in Australia. Pursuant to the terms of the commercial-scale demonstration agreement (the "Project Agreement"), Heliogen has agreed to complete the engineering, procurement, and construction of a new 5 MWe HelioPower facility to be built in Mojave, California for testing, research and development. The two companies also agreed to include the scope and associated funding from Heliogen's $39 million award from the U.S. Department of Energy's Solar Energy Technology Office (the "DOE Award"). As a result, in addition to commercial-scale demonstration of Heliogen's 5 MWe power module, the project will also include the deployment and testing of an innovative approach to converting the thermal energy produced by Heliogen's facility into power with a smaller footprint than traditional steam turbines.

In addition to the Project Agreement, Heliogen and Woodside also signed a collaboration agreement to jointly market Heliogen's technology in Australia (the "Australia Collaboration Agreement") with the objective to deploy further commercial-scale modules of HelioHeat, HelioPower, and HelioFuel offerings. Under this arrangement, the parties expect to define product offerings that use Heliogen's modular technology for potential customers (including Woodside) in Australia and are establishing a roadmap to identify and engage with those customers.

Key Development Milestone - Supercritical CO_2 Power Generation System

During the first quarter of 2022, we achieved a key development milestone, transitioning from design into testing and implementation of our supercritical CO2 ("sCO2") power generation system to be utilized to generate carbon-free electricity for our above disclosed 5 MWe commercial-scale deployment for our customer, Woodside.

We also progressed several of the innovations being deployed on this project, in collaboration with our supply chain partners. For example, working with Hanwha Power Systems ("Hanwha"), a global leader in the development of eco-friendly power generation solutions, we have developed a modular, high-efficiency 5 MWe sCO2 power block integrated with high temperature solid media thermal energy storage, designed to meet the renewable power generation requirements for industrial customers in the energy, mining and other heavy industries. We had previously entered into an agreement with Hanwha for the production and delivery of the power block for the Mojave, California demonstration project. We have also developed an advanced heat exchanger which will be used to transfer thermal energy from thermal storage to the power block's sCO2 working fluid. Heliogen has partnered with Vacuum Process Engineering and Solex Thermal Science for the design and fabrication of the heat exchanger, and with Combustion Associates Inc. for the construction of a test facility, which will validate its performance.

Key Factors and Trends Affecting our Business

Growth Opportunity

Heliogen's growth is tied to the global phenomenon commonly described as "the energy transition" – that is, the shift in energy supply from burning fossil fuels to harnessing low-carbon and renewable sources of energy. Data linking the role of carbon emissions in accelerating climate change has led to shareholders and activists applying pressure to companies and governments to take action. This trend has been on the rise since the signing of the Paris Agreement in 2015, led largely by Europe. As a result, the energy transition has become a major focus of both private and public sector leaders around the world. Companies and governments have begun setting ambitious goals to reduce greenhouse gas ("GHG") emissions and to use renewable resources to sustainably power their operations.

Heliogen's growth strategy is to harness the significant demand by delivering technology that enables scalable, distributed, solar-thermal energy plants that can create heat, steam, power, and "clean" hydrogen– i.e., without the carbon

emissions produced by fossil fuel energy sources. Our solutions target the end markets with a need for heat, electric power, and hydrogen. Such markets include the oil & gas, power, cement, steel, and mining industries.

Heliogen's technology platform allows modular plants for heat, steam, power, and/or hydrogen to be built at customer locations. The Company's strategy to achieve scale is through modularity and repeatability, with minimal custom re-engineering compared to prior iterations of this technology. The majority of the plant will be built in a factory that can be scaled to produce many plants per year. Heliogen will be able to further scale by replicating that factory in multiple regions as we expand globally.

Leveraging the modularity of the system and repeatability of its implementation, in the near to medium term, Heliogen will partner with contractors and other supply chain participants to execute projects. In the long term, the Company expects to license our core, patent-protected technology to owner-operators and EPC companies who can each deploy many plants, to achieve a scale and growth trajectory that can take advantage of the size of the market opportunity. Licensing could enable Heliogen to improve the pace of our deployments, as well as increase our profit margins, beyond what could be achieved solely through our direct implementation.

In order to support Heliogen's growth as described above, we will continue our dedication to research and development and to iterating on our novel combination and integration of hardware and software. We are working to harness our specialty of using more software, more automation, more robotics, and more algorithms to reduce the quantity of materials, the amount of human labor, and the duration of time required to deliver our projects at scale.

Geographically we are focused initially on the U.S., but plan to position the Company to respond to global demand in locations with strong solar resource such as Mexico, South America, Australia, Africa and parts of Europe in the future. Global energy demand is expected to increase by 35% in the next two decades, due to an increase in population and the economic growth of developing countries. Demand for carbon-free replacements for current energy sources will further increase the demand for Heliogen's products.

Market Opportunity

Capital expenditure investments for solar and on- and off-shore wind capacity between 2020 and 2030 are projected to be approximately $8.5 trillion globally in order to achieve the carbon emissions reductions that would support the 1.5 degree global warming target established by the Paris Agreement. The global renewable energy market had total revenues of $692.8 billion in 2020, representing a compound annual growth rate ("CAGR") of 8.9% between 2016 and 2020. The global renewable energy market is expected to continue its upward growth over the next several years, reaching $1.1 trillion by 2027. At the same time, the global total addressable market for energy storage is predicted to reach approximately $56.0 billion by 2027 in comparison to $8.0 billion in 2020, representing a CAGR of approximately 33%. Growing at a CAGR of approximately 43% between 2020 and 2027, the cumulative requirement for global storage capacity is expected to become a 534 gigawatt-hour opportunity in 2027.

We plan to also provide solutions for hydrogen production and industrial heat, so we believe our total addressable market is even larger. Our potential sales pipeline is diverse, ranging from utilities and independent power producers, oil and gas companies, mining and metals companies, and manufacturers of steel and cement. The worldwide energy industry generates annual revenues of approximately $8.6 trillion. In addition, the worldwide clean energy market is expected to reach $24 trillion by the end of the decade.

Government Targets and Corporate Initiatives

Governments, corporations, and investors are making concerted efforts and setting aggressive targets to reduce GHG emissions and phase out fossil fuel use. Such initiatives include setting timelines for zero-emission targets, establishing caps on CO2 emissions, and instituting certain other environmental sustainability initiatives. For example, in the U.S., the Biden Administration has declared the following key environmental targets: (i) a carbon pollution-free power sector by 2035, (ii) a net-zero (i.e., carbon reduction is equal to or greater than carbon emissions) economy by 2050 and (iii) to achieve in 2030 a 50-52% reduction from 2005 levels in economy-wide net GHG pollution. In the private sector, companies have also committed to environmental sustainability initiatives. Leading financial and corporate institutions have requested that all boards of directors prepare and disclose a plan to be compatible with a net-zero economy and to commit to launching investment products aligned to a net-zero pathway. Individually and collectively, these initiatives support the increased demand for renewable fuels, transportation, energy storage, renewable power, low-carbon process heat, and energy efficiency.

The key driver for renewable energy generation and storage will be increased reliance on intermittent renewable energy resources like solar PV and wind. As penetration of these renewable sources increases, the intermittency of these resources can put strain on the grid if the operator is unable to fully match supply with demand. This strain can lead to an inability to supply power when it is needed and increased costs to consumers.

Energy storage can help reduce this strain. However, beyond a threshold level of renewable penetration, current solutions to energy storage, such as batteries, are insufficient to ensure grid reliability. Research from the National Renewable Energy Laboratory, a national laboratory of the U.S. Department of Energy, suggests that this threshold may be around 30% renewable penetration based on its Eastern Renewable Generation Integration Study; which found that the Eastern Interconnection, one of the largest power systems in the world, can accommodate upwards of 30% of wind and solar photovoltaic power. California is already at this level and we expect other specific geographies both in the United States and abroad will be there soon. Bloomberg New Energy Finance projects that the United States as a whole will exceed this target by 2029. In order to maintain system stability and achieve mandated decarbonization goals, longer duration energy storage options must be deployed. We believe Heliogen's technology will be among a small list of available technologies that will be able to respond to this energy storage need in order to maintain grid reliability.

To note, changes in elected officials may directly result in changes to U.S. government mandates and available programs as well as indirectly result in changes to support from the private sectors. Such changes may have an adverse impact on the growth of renewable energy.

Competitive Strengths

We believe we have a first-mover advantage over other industry competitors as we have been committed since our founding in 2013 to the development of solar energy solutions that enable decarbonization of our economy. This is evidenced by our rich portfolio of intellectual property. We have demonstrated capability to concentrate sunlight to produce heat at temperatures ranging from 150 to 1,000 degrees centigrade, made possible by our first-of-a-kind ability to achieve high mirror adjustment accuracy. We have patented the most valuable parts of our technology at each stage of development. Beyond the patents, our journey as a company and the deep bench of experience across our leadership team has provided and continues to provide invaluable learnings and technical know-how that we believe will be difficult to rival. We continue to develop and maintain our knowledge base, which we believe provides us with a substantial strategic head start and competitive advantage against competition in the concentrated solar energy and energy storage spaces. We also continue to target incremental and transformational improvements across all aspects of our technology in order to reduce costs and improve performance.

Raw Materials

The most important raw materials required for our CSE systems are steel (sheet, tube, bar, extrusions), stainless steel (pipe), glass (float glass), copper (wiring), aluminum (die castings, extrusions), commodity electrical & electronics components, ceramics & ceramic fibers, thermal insulation materials, bauxite particles and/or silica sand and concrete. Our components are produced by suppliers both domestically and internationally where most raw materials are readily available and purchased by those independent contractors and suppliers in the country of manufacture. Many major equipment and systems components are procured on a single or sole-source basis, but where multiple sources exist, we work to qualify multiple suppliers to minimize supply chain risk. We also mitigate risk by maintaining safety stock for key parts and assemblies with lengthy procurement lead times. We use a variety of agreements with suppliers to protect our intellectual property and processes to monitor and mitigate risks of the supply base causing a business disruption. The risks monitored include supplier financial viability, the ability to increase or decrease production levels, business continuity, quality and delivery.

The ongoing COVID-19 pandemic has resulted in significant supply chain disruptions globally, and similar to other companies in our industry, we have observed significant commodity price inflation in recent months, in some cases by upwards of 30% to 100%. Russia's invasion of and military attacks on Ukraine, including indirect impacts as a result of sanctions and economic disruption, have and may continue to further complicate existing supply chain constraints. Shortages, price increases and/or delays in shipments of our raw materials and purchased component parts, such as steel, glass, concrete and adhesives, which are used as components of supplies or materials utilized in our operations, have occurred and may continue to occur in the future which may have a material adverse effect on our results of operations if we are unable to successfully mitigate the impact.

COVID-19 Pandemic

In March 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic. As the pandemic has continued to evolve, including the emergence of additional SARS-CoV-2 variants that have proven especially contagious or virulent, the ultimate extent of the impact on our businesses, operating results, cash flows, liquidity and financial condition will be driven primarily by the severity and duration of the pandemic, the pandemic's impact on the U.S. and global economies. During the period ended March 31, 2022, despite the continued COVID-19 pandemic, we continued to operate our business at full capacity, including all of our manufacturing and research and development operations, with the adoption of enhanced health and safety practices for our stakeholders.

Results of Operations

Key Components of Our Results of Operations

Revenue - For our contracts with customers, we recognize revenue over time using the incurred costs method for projects under development and engineering and design services. For government grants, we recognize grant revenue based on the amounts determined to be reimbursable for costs, including permitted indirect costs, incurred during a given period and we have reasonable assurance of the funds being received under the grant.

Cost of Sales - Cost of sales consists primarily of direct labor and direct external vendor costs related to our revenue contracts. No allocation of depreciation and amortization has been recognized due to the nature of work being performed and the impact would be immaterial.

Selling, General and Administrative Expense - SG&A expense consists primarily of salaries and other personnel-related costs, professional fees, insurance costs, and other business development and selling expenses.

Research and Development Expense - Research and development ("R&D") expense consists primarily of salaries and other personnel-related costs; the cost of products, materials, and outside services used in our R&D activities.

Comparison of the Three Months Ended March 31, 2022 and 2021

$ in thousands	Three Months Ended March 31, 2022	2021
Revenue	$ 3,539	$ 516
Cost of revenue:		
Cost of revenue	3,524	516
Provision for contract losses	33,737	—
Total cost of revenue	37,261	516
Gross loss	(33,722)	—
Operating expenses:		
Selling, general, and administrative	20,395	2,152
Research and development	9,605	1,608
Total operating expenses	30,000	3,760
Operating loss	(63,722)	(3,760)
Other income (expense):		
Interest income, net	194	40
Gain (loss) warrant remeasurement	4,026	(303)
Other expense, net	(76)	(33)
Net loss before taxes	(59,578)	(4,056)
Income tax benefit	610	—
Net loss	(58,968)	(4,056)
Total comprehensive loss	$ (59,348)	$ (4,068)

Revenue and Gross Loss

During the three months ended March 31, 2022, we recognized revenue of $3.5 million driven primarily by project revenue for work associated with the development and planned deployment of our technology and product offerings on a commercial scale, including $1.5 million of grant revenue recognized under the DOE Award. Under a commercial-scale demonstration agreement (the "Project Agreement") executed with a customer in March 2022, we will complete the engineering, procurement, and construction of a new 5 MWe concentrated solar energy facility to be built in Mojave, California (the "Facility") for customer's use in testing, research and development. The Facility is expected to serve as a fully operational model for the customer's use in demonstrating the Company's technology and product offerings at a commercial scale to aid in the development, engineering, and construction of larger, commercial scale facilities under separate agreements between the Company and the customer or other third-party customers.

We recognized gross loss of $33.7 million during the three months ended March 31, 2022 driven primarily by recognition of a contract loss of $32.9 million related to the Project Agreement and Facility. The contract loss recognized during the first quarter reflects our best estimate as of March 31, 2022 of the full expected loss on the entire facility given consideration expected to be realized under the Project Agreement (net of the fair value of related warrants grant to the customer) and the DOE Award. Revenue expected to be recorded for the Mojave, California project is approximately $84.5 million over the full term of the project, of which $42.6 million is identified as noncancelable at March 31, 2022. Our cost estimates as of March 31, 2022 for the anticipated final scope of the facility are subject to further refinement as we continue detailed engineering and design with the customers, obtain firm pricing from subcontractors, order long-lead items, and better understand short- and long-term commodity and market impacts on cost inputs to the Project Agreement and Facility. As a result, the actual loss for the Project Agreement and Facility could vary from our current estimates.

During the three months ended March 31, 2021, we recognized revenue of $0.5 million and no gross profit or loss associated with an engineering and design services contract.

Selling, General, and Administrative Expense

SG&A increased approximately $18.2 million, from $2.2 million for the three months ended March 31, 2021 to $20.4 million for the three months ended March 31, 2022. The increase was primarily driven by our growth to support commercial operations, resulting in higher headcount and related employee expenses of approximately $14.3 million, professional and consulting services to support public company readiness efforts of $2.1 million, and facilities and office related expenses of $1.8 million due to increased space requirements in our Pasadena, California and Long Beach, California facilities.

Research and Development Expense

R&D expense consists primarily of salaries and other personnel-related costs; the cost of products, materials, and outside services used in our R&D activities.

R&D expense increased $8.0 million, from $1.6 million for the three months ended March 31, 2021 to $9.6 million for the three months ended March 31, 2022. The increase was primarily due to headcount growth and related consulting services associated with our efforts to ramp up and further develop our commercial-scale offering.

Warrant Remeasurement

As part of the Business Combination, we assumed the outstanding public and private warrants of Athena, which are accounted for at fair value based on the closing share price of the Company's common stock. We incurred a $4.0 million gain during the three months ended March 31, 2022 related to the change in valuation on our warrant liabilities, compared to a loss of $0.3 million during the three months ended March 31, 2021.

Liquidity and Capital Resources

Heliogen's principal source of liquidity has historically been proceeds from private investors through the issuance of SAFE Instruments, preferred stock, and common stock. Upon closing of the Business Combination with Athena completed in December 2021, Heliogen received net cash proceeds of $159.4 million. In March 2022, Heliogen entered a series of commercial agreements with a customer for the commercial-scale demonstration and deployment of Heliogen's AI-enabled concentrated solar energy technology in California and the marketing of Heliogen's technology in Australia, and is in the process of negotiating further revenue contracts. These contracts will provide a significant source of cash for the Company. Our principal uses of cash are for project-related expenditures, selling, general and administrative expenses and R&D expenditures in support of Heliogen's development of its technology and operational growth efforts. To date, Heliogen has not had any material bank debt and has no material outstanding debt on the balance sheet as of March 31, 2022. Total liquidity for Heliogen, including cash and cash equivalents and available-for-sale investments, totaled $191.9 million and $222.4 million as of March 31, 2022 and December 31, 2021, respectively.

With the funds raised in connection with the Business Combination, we believe that our existing liquidity should provide the ability to meet our contractual obligations and continue our current R&D efforts and development of our first commercial facilities and will be sufficient to meet our near-term cash requirements. However, we could potentially use these available financial resources sooner than expected due to delays in project execution or higher than anticipated costs and, thus we may need to incur additional indebtedness or issue additional equity to meet our operating needs. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in developing our new technologies, this could reduce our ability to compete successfully and harm our business, growth and results of operations. While we believe we will meet longer-term expected future cash requirements and obligations through a combination of our existing cash and cash equivalent balances, cash flow from operations, and issuances of equity securities or debt offerings, our future capital requirements and the adequacy of available funds will depend on many factors, including those disclosed in Part I, Item 1A in our 2021 Form 10-K/A for the year ended December 31, 2021.

Summary of Cash Flows

A summary of the Company's cash flows from operating, investing and financing activities is presented in the following table:

	Three Months Ended March 31,	
$ in thousands	**2022**	**2021**
Net cash used in operating activities	$ (22,673)	$ (625)
Net cash used in investing activities	(102,728)	(27,796)
Net cash (used in) provided by financing activities	(1,065)	73,006

Net Cash from Operating Activities

Net cash used in operating activities was $22.7 million for the three months ended March 31, 2022 compared to $0.6 million cash used in operating activities for the three months ended March 31, 2021, resulting in a $22.0 million increase in use of operating cash. Cash flows used in operating activities result primarily from Heliogen's ramp-up of operations and increases in headcount and are also affected by changes in operating assets and liabilities which consist primarily of working capital balances for our projects. Working capital levels may vary and are impacted by the stage of completion and commercial terms of projects. The primary components of our working capital accounts are accounts receivable, contract assets, accounts payable, and contract liabilities.

Net Cash from Investing Activities

For the three months ended March 31, 2022, cash used in investing activities was $102.7 million and consisted of cash invested in available-for-sale debt securities of $122.5 million offset by proceeds from maturities of available-for-sale debt securities of $21.1 million, and $1.4 million for capital expenditures primarily comprised of $0.9 million in machinery, equipment and improvements for our new Long Beach manufacturing facility and $0.4 million in office and computer equipment to support our headcount growth. Cash used in investing activities for the three months ended March 31, 2021 was $27.8 million and primarily represents cash invested in available-for-sale debt securities.

Net Cash from Financing Activities

Cash used in financing activities totaled $1.1 million for the three months ended March 31, 2022, driven primarily by $1.3 million transaction costs paid related to the Business Combination, which were previously accrued at December 31, 2021, slightly offset by $0.2 million cash received from the exercise of stock options. Cash provided by financing activities totaled $73.0 million for the three months ended March 31, 2021 and was due primarily to $73.2 million cash received from the issuance of the SAFE instruments, $0.2 million cash received from the exercise of stock options, slightly offset by $0.4 million for repayment of the Paycheck Protection Program loan received in 2020.

Critical Accounting Estimates

There have been no material changes to our discussion of critical accounting estimates from those set forth in our 2021 Annual Report on Form 10-K/A for the year ended December 31, 2021.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are a smaller reporting company as defined by Item 10 of Regulation S-K and are not required to provide the information otherwise required under this item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is (1) recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can

provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

In connection with the preparation and audit of our financial statements as of and for the fiscal year ended December 31, 2021, we identified certain material weaknesses in our internal control over financial reporting, which is an integral component of our disclosure controls and procedures. The material weaknesses existing at December 31, 2021, for which remediation is ongoing at March 31, 2022, are as follows:

- We did not design or maintain an effective control environment specific to the areas of financial reporting and its close process, including effective review of technical accounting matters.

- We did not design or maintain an effective control environment to ensure proper segregation of duties, including separate review and approval of journal entries and access within our accounting system.

In addition to the actions we took during 2021 to remediate the deficiencies in our internal control over financial reporting we are implementing additional processes and controls designed to address the underlying causes associated with the above-mentioned deficiencies. We are committed to remediating the deficiencies described above in a timely manner. Our incremental efforts taken in 2022 to implement measures designed to improve our internal control over financial reporting to remediate these deficiencies include, but are not limited to, the following:

- During the first quarter of 2022, we continued the implementation of additional functionality within our company-wide enterprise resource planning system.

- We engaged a large multinational accounting firm to provide certain advisory and internal audit services, under the oversight of the audit committee of our board of directors, including, but not limited to, advising on the remediation of the material weaknesses identified above, performing a comprehensive internal controls gap assessment, assist in further enhancement and development of the Company's business processes, and perform testing of internal controls, as applicable. We expect all of these services will significantly enhance our internal controls environment and provide a basis on which management can assess and conclude upon the remediation of the material weaknesses.

- We developed and improved recurring accounting processes providing more timely and detailed review of complex and routine areas, including internal stakeholder engagement to timely and accurately identify new or complex transactions.

These additional resources, policies and procedures are designed to enable us to broaden the scope and quality of our internal review of underlying information related to financial reporting and to formalize and enhance our internal control over financial reporting environment. We are committed to continue to take steps to address the underlying causes of the material weaknesses in a timely manner and will continue to monitor the effectiveness of our remediation plan and will refine as appropriate. While we are undertaking efforts to remediate these material weaknesses, the material weaknesses will not be considered remediated until our remediation plan has been fully implemented, the applicable controls operate for a sufficient period of time, and we have concluded, through testing, that the newly implemented and enhanced controls are operating effectively.

With the foregoing in mind, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of March 31, 2022, our disclosure controls and procedures were not effective at a reasonable assurance level as a result of the material weaknesses discussed above. Notwithstanding the existence of the material weaknesses described above, management believes that the condensed consolidated financial statements in this Quarterly Report on Form 10-Q fairly present, in all material respects, the Company's financial position, results of operations and cash flows for all periods and dates presented in accordance with U.S. GAAP.

Changes in Internal Control over Financial Reporting

Other than in connection with executing upon the implementation of the remediation measures as described above, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended March 31, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Part II - Other Information

Item 1. Legal Proceedings

Information relating to various commitments and contingencies is described in Note 13 to our condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

There are no material changes from the risk factors previously disclosed in Part I, Item 1A in our Annual Report on Form 10-K/A for the year ended December 31, 2021.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

On March 28, 2022, in connection with the concurrent execution of the commercial-scale demonstration agreement (the "Project Agreement") and collaboration agreement (the "Collaboration Agreement") with a customer in March 2022, the Company issued warrants to purchase in the aggregate approximately 4.56 million shares of the Company's common stock at an exercise price of $0.01 per share. Of these warrants, (i) 912,409 Project Warrants vest pro rata with certain payments required to be made under the Project Agreement, (ii) 1,824,818 Collaboration Warrants vested immediately upon execution of the Collaboration Agreement and (iii) up to 1,824,820 Collaboration Warrants will vest based on the customer reaching certain specified performance goals under the Collaboration Agreement. The fair value of both the Project Warrants and Collaboration Warrants is $4.96 per warrant. The Project Warrants and Collaboration Warrants expire upon the earlier of a change in control of the Company or March 28, 2027. The Project Warrants and Collaboration Warrants and the shares of common stock underlying such warrants were issued in a private placement exempt from the registration requirements of the Securities Act, in reliance on the exemptions set forth in Section 4(a)(2) of the Securities Act.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Number	Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
3.1	Second Amended and Restated Certificate of Incorporation of Heliogen, Inc.	8-K	001-40209	3.1	January 6, 2022
3.2	Amended and Restated Bylaws of Heliogen, Inc.	8-K	001-40209	3.2	January 6, 2022
4.1	Specimen Common Stock Certificate of Heliogen, Inc.	8-K	001-40209	4.1	January 6, 2022
4.2	Form of Warrant Certificate of Heliogen, Inc.	S-1	001-40209	4.2	January 24, 2022
4.3	Warrant Agreement, dated March 16, 2021, by and between Athena Technology Acquisition Corp. and Continental Stock Transfer & Trust Company.	8-K	001-40209	4.1	March 22, 2021
10.1*†	Collaboration Agreement-Australia, dated March 28, 2022, by and between Heliogen Holdings, Inc. and Woodside Energy Technologies Pty. Ltd.				
10.2*†	Commercial-Scale Demonstration Agreement, dated March 28, 2022, by and between Heliogen, Inc. and Woodside Energy (USA) Inc.				

Exhibit Number	Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
10.3*	Warrant to Purchase Class A Common Stock of Heliogen, Inc. in connection with Commercial-Scale Demonstration Agreement, dated March 28, 2022, by and between Heliogen, Inc. and Woodside Energy (USA) Inc.				
10.4*	Warrant to Purchase Class A Common Stock of Heliogen, Inc. in connection with Collaboration Agreement, dated March 28, 2022, by and between Heliogen, Inc. and Woodside Energy (USA) Inc.				
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
101.INS*	Inline XBRL Instance Document				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB*	Inline XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document				
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).				

* Filed herewith.

** Furnished herewith and not deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

*** Certain portions of this exhibit (indicated by asterisks) have been excluded pursuant to Item 601(b)(10) of regulation S-K because they are both not material and are the type that the Registrant treats as private or confidential.

† Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601. The Company agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Heliogen, Inc.

/s/ Bill Gross

Bill Gross
Chief Executive Officer
(Principal Executive Officer)

Dated: May 23, 2022

/s/ Christiana Obiaya

Christiana Obiaya
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Dated: May 23, 2022

Exhibit 10.1

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY […***…], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT HELIOGEN, INC. TREATS AS PRIVATE OR CONFIDENTIAL

COLLABORATION AGREEMENT - AUSTRALIA

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between

Heliogen Holdings, Inc.

and

Woodside Energy Technologies Pty. Ltd.

Dated March 28, 2022

THIS COLLABORATION AGREEMENT - AUSTRALIA (this "***Agreement***") is made and entered into on March 28, 2022 (the "***Effective Date***"), by and between **HELIOGEN HOLDINGS, INC.**, a Delaware corporation ("***Heliogen***"), and **WOODSIDE ENERGY TECHNOLOGIES PTY. LTD.**, an Australian corporation with Australia Business Number 12 111 767 232 ("***Woodside***") each a "**Party**" or together the "**Parties**".

WHEREAS Woodside desires for a Base CS Technology provider and collaborator to support it in creating a reliable source of renewable electric power and using renewable power to produce 'green' hydrogen, both for its own use as well as for use by third parties;

WHEREAS Heliogen is engaged in the development and deployment of its Base CS Technology to support multiple uses, including the generation of reliable renewable electrical power and other industries that require a reliable supply of renewable energy, including to produce 'green' hydrogen;

WHEREAS Heliogen and an Affiliate of Woodside entered into the development agreement dated 24 December 2020 relating to the evaluation and implementation of certain development activities, including a potential small-scale CS plant demonstrating Heliogen's Base CS Technology ("***Development Agreement***");

WHEREAS the Parties desire to cooperate and coordinate to: (a) identify and engage with Australian Customers in relation to the Product Offering; (b) negotiate the terms of Potential Transactions with Australian Customers; and (c) enter into Customer SPAs and/or other agreements with Australian Customers in relation to the Product Offering ("***Transaction Agreements***"). The Parties share the objective of facilitating the commercialisation of Heliogen's Base CS Technology and, as part of satisfying Woodside's role in facilitating the transition of energy consumers to low and zero carbon energy sources, the deployment and use of Heliogen's Base CS Technology in Australia ("***Joint Objectives***");

WHEREAS the Parties are parties to the document entitled 'Warrant to Purchase Class A Common Stock of Heliogen, Inc' dated as of the Effective Date related to the grant by Heliogen of warrants to Woodside and the subscription by Woodside of Heliogen stock, as provided therein;

WHEREAS the Parties or their Affiliates are parties to the document entitled 'Commercial Scale Demonstration Agreement' dated as of the Effective Date ("***Commercial Scale Demonstration Agreement***") relating to the development of a behind-the-meter CSP plant using Heliogen's Base CS Technology on a basis contemplated by the Development Agreement ("***Capella Solar Plant***"); and

WHEREAS Heliogen desires to designate Woodside, and Woodside desires to accept such designation, as the marketing partner of Heliogen's Base CS Technology for use in Australia for any application including electric power and/or heat, steam, and hydrogen production, all as more fully provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

The terms defined in Exhibit A attached to and made a part of this Agreement shall have those meanings wherever used in this Agreement.

1.2 Construction and Interpretation

In this Agreement:

(a) Words denoting the singular will include the plural and vice versa. Words denoting one gender will include another gender;

(b) The words "including" and "include" do not limit the words that follow and shall mean including without limitation and include without limitation, respectively; and

(c) The titles and headings in this Agreement are for convenience of reference only and will not be deemed to alter or affect any provision thereof.

In this Agreement, unless the context otherwise requires:

(d) A reference to a Law, agreement or other document is a reference to it as amended, supplemented, modified or restated in whole or in part from time to time;

(e) Any reference to any "Article", "Section", "Paragraph" or "Exhibit" is a reference to the applicable article, section, paragraph or exhibit of this Agreement; and

(f) The word "or" when used in a list shall not indicate that the listed items are exclusive of each other.

1.3 Exhibits

The Exhibits form part of this Agreement and references to this Agreement shall include such Exhibits.

1.4 Dates, times and periods

In relation to specific dates and the calculation of time:

(a) references to dates and times of day are to the date and time in Perth, Western Australia unless another place is specified;

(b) if a period of time is to be calculated from a specific date or event, the relevant period will exclude the day on which the date or event occurred; and

(c) if a Party's performance or action (including delivery of a notice) occurs after 5.00 pm on a day, such performance or action will be taken to have occurred on the following day.

ARTICLE 2
OBJECTIVES OF THIS AGREEMENT

2.1 This Agreement sets out the principles agreed between the Parties for, and governs the rights and obligations of the Parties in relation to, the following:

(a) The Product Offering and Australian Customers in relation to the Product Offering;

(b) The grant of certain exclusive rights by Heliogen to Woodside and by Woodside to Heliogen; and key conditions, steps and framework for any extension of the period for which those rights are granted; and

(c) Establishing an initial framework for the Parties to:

(i) engage with Australian Customers in relation to the Product Offering;

(ii) initiate and progress Potential Transactions; and

(iii) prepare forms of Customer SPAs and other Transaction Documents and negotiate their terms with Australian Customers.

2.2 The Parties acknowledge that certain provisions of this Agreement may be superseded by more detailed methods and practices and/or other provisions agreed by the Parties upon execution of the Marketing Agreement. The Marketing Agreement will describe the effect that execution of the Marketing Agreement is intended to have on this Agreement.

ARTICLE 3
UNDERTAKING CUSTOMER ENGAGEMENT ACTIVITIES

3.1 Australian Customers

During the term of this Agreement, the Parties shall engage, in accordance with the terms of this Agreement, with Third Parties with business activities located in Australia that may reasonably be in the market for purchasing or using the Product Offering (the "***Australian Customers***") in the manner set out in this Article 3.

3.2 Woodside and Heliogen Product Offering

The Parties agree that the product offering to Australian Customers (the "***Product Offering***"):

(a) shall be for their business activities (and only for their business activities) in Australia;

(b) must include Heliogen's Base CS Technology; and

(c) may include other offerings by a Party (as may be agreed by the Parties from time to time) in relation to:

(i) generation, use or storage of renewable electrical energy or renewable thermal energy;

(ii) production of hydrogen, hydrogen-based energy carriers and low-carbon fuels using renewable energy;

(iii) storage and transportation systems and know-how, including compression, liquefaction, conversion and decompression or regasification; and/or

(iv) plant modularisation, systems integration and other technical or operational know-how.

3.3 Engagement with Australian Customers

The Parties agree that any engagement with an Australian Customer with respect to the Product Offering (including in respect of any Potential Transaction) will be undertaken, on a coordinated and consultative basis between the Parties, including as follows:

(a) The Parties will work together to identify potential customers who have business activities in Australia that may benefit from the Product Offering and to plan and report on opportunities for working together to market the Product Offering.

(b) Following the Effective Date, the Parties will hold periodic discussions at a mutually convenient location or by videoconference in order to:

(i) exchange views and information to facilitate the marketing and sale of the Product Offering to Australian Customers;

(ii) discuss and agree on the initial standard materials referred to in Section 3.4(b) and/or updates and revisions to them;

(iii) evaluate and approve proposals to be made to Australian Customers regarding a Potential Transaction, including customer-specific changes to the standard materials referred to in Section 3.4(b); and

(iv) plan and co-ordinate the negotiation of any Customer SPAs and other Transaction Agreements in respect of any Potential Transaction and execution of Customer SPAs and other Transaction Agreements;

(c) Each Party will have the right to attend and participate in all material meetings and discussions with the Australian Customers in relation to the Product Offering and any Potential Transaction, including meetings related to the negotiation of Customer SPAs and other Transaction Agreements, with each Party having the right to equal representation at those meetings (in terms of the number of representatives and the seniority of those representatives);

(d) Woodside shall lead all meetings and discussions with the Australian Customers with respect to the Product Offering or a Potential Transaction;

(e) Prior to any meeting with Australian Customers with respect to the Product Offering or a Potential Transaction, the Parties will use reasonable endeavours to agree an agenda, commercial positions consistent with the Joint Objectives, representatives, mandates and discussion items to be addressed at the meeting;

(f) Each Party acknowledges, and agrees to promote in good faith, the other Party's positive contribution to the Product Offering; and

(g) Following any meeting with an Australian Customer with respect to the Product Offering or a Potential Transaction, the Parties will discuss next steps including allocation of responsibility for tasks and timelines for completing them.

3.4 Information Sharing with an Australian Customer

(a) Woodside shall maintain a register or other record of Australian Customers to which it has introduced the Product Offering. The Parties agree not to provide to any Australian Customer any tailored marketing or negotiation materials containing customer-specific commercial or technical proposals about the Product Offering or a Potential Transaction as amendments to the standard versions referred to in Section 3.4(b) (including marketing presentations with tailored pricing, project and use-case information and draft Customer SPAs or other Transaction Agreements) without the prior approval of both Parties, such approval shall not be unreasonably delayed or withheld.

(b) The Parties will agree on standardised, general forms of marketing materials in relation to the Product Offering and standard versions of technical, commercial and legal documents with respect to Potential Transactions to support introductory discussions with Australian Customers (including marketing presentations, technical information and standard forms of Customer SPAs and other Transaction Agreements for the Australian market).

(c) Woodside will be primarily responsible for, in coordination and collaboration with Heliogen:

(i) sharing information in relation to the Product Offering and Potential Transactions in Australia;

(ii) establishing and maintaining relationships with Australian Customers and keeping 'trackers' and other similar records; and

(iii) preparing any tailored proposals to be made to Australian Customers to be approved pursuant to Section 3.4(a) and negotiating any Customer SPA and other Transaction Agreements.

(d) Nothing in this Agreement imposes any obligation on the Parties to enter into any binding agreements with any other Third Party, including to execute any Customer SPA or other Transaction Agreement or to consummate any other transaction with the Australian Customers, and neither Party is liable to the other Party in connection with any inability or failure to conclude any agreement with any other Third Party.

3.5 Manner of performance

The Parties agree to act professionally and with commercially reasonable diligence in all interactions with Australian Customers and with each other.

3.6 Heliogen and Woodside Commitments

To support Woodside in marketing the Product Offering and in preparing, negotiating and concluding Customer SPAs and any other Transaction Agreements, Heliogen agrees to (a) devote sufficient internal resources to: (i) developing technical and commercial proposals for any Potential Transaction based on site identification and other information provided by Woodside; (ii) negotiating and executing the Marketing Agreement and any other required agreements between the Parties; and (iii) to the extent it elects to do so, participating in commercial discussions and negotiation with Australian Customers with respect to the relevant Transaction Agreements; (b) provide to Woodside due diligence information about Heliogen's Base CS Technology, including information regarding how Heliogen's Base CS Technology can solve the renewable power and/or steam needs of Australian Customers as part of the Product Offering, and any other agreed aspects of the Product Offering for which Heliogen has information, in each case that is reasonably requested by Australian Customers or Woodside; (c) review due diligence information provided by Australian Customers or Woodside; and (d) collaborate with Woodside on marketing efforts, joint customer interaction and finding Australian Customers in accordance with this Article 3.

Woodside agrees to (a) devote sufficient internal resources to (i) identifying potential sites which are suitable for the installation and location of CS facilities using Heliogen's Base CS Technology, including sites that will be owned or used by Woodside or its Affiliates, and (ii) obtaining from Australian Customers and providing site-specific suitability and other information reasonably requested by Heliogen in connection with the use of Heliogen's Base CS Technology at that site; (iii) negotiating and executing the Marketing Agreement and any other required agreements between the Parties; and (iv) discussing and negotiating any Customer SPAs and other Transaction Agreements with Australian Customers; (b) provide due diligence information about any agreed aspects of the Product Offering for which Woodside has information that is reasonably requested by Australian Customers or Heliogen; (c) review due diligence information provided by Australian Customers or Heliogen; and (d) lead marketing efforts, joint customer interaction and finding Australian Customers in accordance with this Article 3.

3.7 Commercial and Legal Structure.

(a) The Parties acknowledge and agree that the preferred terms governing the marketing of the Product Offering, and the preferred commercial and legal structure associated with implementation of any Potential Transactions, will not be known until after the progressing the activities set out in Section 3.5 and Section 3.6, including in each case where applicable:

(i) whether the Marketing Agreement will be structured and implemented by way of an incorporated or unincorporated joint venture, an independent services arrangement or by an alternative structure;

(ii) Woodside's compensation for a successful closing of any Potential Transaction as provided in Section 3.7(c) and the other Marketing Agreement terms; and

(iii) the terms of any standardised forms of documents referred to in Section 3.4(b) including Customer SPAs and any other Transaction Agreements.

(b) The Parties agree to negotiate in good faith regarding the Marketing Agreement and, as part of those negotiations, the compensation payable to Woodside for a successful closing of a binding Customer SPA (other than a Customer SPA with Woodside or an Affiliate, for which Woodside will not be entitled to any compensation), during the period between the Effective Date and the date that is eighteen (18) months after the Effective Date (as such period may be extended by mutual agreement of the Parties, the "***Negotiation Period***").

(c) The Marketing Agreement model for compensation payable to Woodside described in Section 3.7(b) will be a tiered structure involving two compensation levels for closing a Potential Transaction in order to reflect the distinction between:

(i) Potential Transactions initiated and developed by Heliogen prior to the Effective Date or referred by Heliogen after the Effective Date as a result of commercial dealings outside the scope of this this Agreement or the Marketing Agreement; and

(ii) Potential Transactions initiated or developed by Woodside or both Parties after the Effective Date,

provided in each case that no amount of compensation is earned or payable for any Potential Transaction where Woodside or its Affiliate acts in its own corporate capacity as buyer and Heliogen or an Affiliate is seller (regardless of how that Potential Transaction was initiated or developed).

(d) If the Parties have agreed on a final form of the Marketing Agreement terms (including the structure of the compensation payable to Woodside for a successful closing of any Potential Transaction as described in Section 3.7(b)) but are unable to reach agreement on the amount of compensation payable to Woodside for a successful closing of any Potential Transaction as described in Section 3.7(b) to either Party's satisfaction by the end of the Negotiation Period, the disagreement regarding such compensation (such disagreement a "***Section 3.7 Dispute***") must be referred to an independent expert to be appointed by both Parties in accordance with Section 15.4. An expert appointed for the purposes of this Section 3.7(d) must make its determination using a 'final offer' process as follows and otherwise in accordance with the provisions of Section 15.4:

(i) within 10 Business Days after the date of the expert's appointment, each Party must submit to the expert a proposal containing the Party's final offer;

(ii) the final offers submitted under subparagraph (d)(i) above must:

(A) specify the amount of compensation for each tier referred to in Section 3.7(c) that would be payable to Woodside in connection with the closing of a Potential Transaction; and

(B) be provided in duplicate with each copy sealed separately to allow one copy to be retained unopened;

(iii) upon receiving final offers from both Parties, the expert must:

(A) simultaneous provide to each Party one sealed copy of the other Party's proposal, which the other Party may open but not disclose to the expert;

(B) retain the other sealed proposal from each Party in an unopened form putting in place reasonable measures to prevent the inadvertent discovery or disclosure of either Party's final offer until the time referred to in subparagraph (d)(vi)(A) below;

(iv) the Parties will be entitled to a period of up to 3 Business Days after the exchange of their respective proposals in order to reach agreement and resolve the relevant matter prior to the expert making a determination;

(v) unless both Parties agree, neither Party shall be entitled to amend its final offer provided in the sealed proposal under subparagraph (d)(i) above. If the Parties agree to amend their respective final offers, the amendment must be prepared and submitted in the same manner as described in subparagraphs (d)(i) and (d)(ii) above;

(vi) if the matter remains unresolved 30 Business Days after the date of the expert's appointment, the expert must:

(A) open the other sealed proposal from each Party containing its final offer; and

(B) select either one of the final offers provided by the Parties as being the compensation it considers to be the nearest to the most reasonable level of compensation that:

(1) a person in the same or similar position to Heliogen would pay to a person in the same or similar position to Woodside; and

(2) is reasonable having regard to the costs incurred or to be incurred by each of Woodside and Heliogen in connection with the marketing of the Product Offering and the negotiation and closing of Potential Transactions, the consideration being received by Heliogen in connection with Potential Transactions, and other matters that the expert considers are relevant in the circumstances.

The expert shall have no power or discretion to unilaterally develop or consider any other alternative amount as compensation;

(vii) the expert must provide a notice to both Parties setting out confirmation of its determination under subparagraph (d)(vi) above; and

(viii) except to the extent conflicting with Section 3.7(d), the provisions of Section 15.4 apply to this Section 3.7(d).

ARTICLE 4
EXCLUSIVITY

4.1 Exclusivity Period

Each of Woodside and Heliogen agrees that the rights and restrictions set out in Section 4.2 and Section 4.3 apply during the period of exclusivity (the "***Exclusivity Period***"), which starts on the Effective Date and ends on the Exclusivity Indicative Expiry Date or other date applicable under Paragraphs (a), (b), or (c) below.

The Exclusivity Period shall be subject to the following adjustments:

(a) (*early expiry*) if the Product Offering has not been formally presented to Australian Customers as a possible solution for providing electricity and/or steam at 20 or more Qualifying Sites in Australia (excluding Qualifying Sites occupied by Woodside or an Affiliate) by the date that Capella Solar Plant Completion occurs, the Exclusivity Period will expire on that date;

(b) (*early termination*) the Exclusivity Period will terminate on the date that this Agreement is terminated pursuant to Section 10.2 (other than Section 10.2(a)); and

(c) (*extension*) if an extension is the outcome determined pursuant to Section 4.4(a), then the Exclusivity Period will be extended by the relevant period that applies under Paragraph 4 of Exhibit C.

4.2 Heliogen Exclusive to Woodside

Heliogen acknowledges and agrees that during the Exclusivity Period:

(a) Heliogen hereby grants to Woodside the right to be, and Woodside shall be, the exclusive marketing partner in Australia of Heliogen's Base CS Technology for use with respect to the Product Offering (the "***Exclusivity Uses***");

(b) Woodside's obligations set forth in Section 4.3 are on condition that, during the Exclusivity Period, Heliogen shall refrain from, and shall cause its Affiliates and its or their agents to refrain from, offering, marketing, selling, supplying or delivering (or entering into any agreement regarding) the Product Offering or Heliogen's Base CS Technology as a standalone product or as part of any other product offering to any Australian Customers for use in respect of business activities in Australia other than pursuant to arrangements with (or made by) Woodside; and

(c) Heliogen shall not offer or grant any license or other similar contractual rights to a Third Party which circumvents the restrictions on Heliogen in this Section 4.2.

4.3 Woodside Exclusive to Heliogen

Woodside acknowledges and agrees that during the Exclusivity Period:

(a) it (i) accepts the designation as, and shall be, the exclusive marketer in Australia of Heliogen's Base CS Technology for the Exclusivity Uses and (ii) subject to the requirements in Article 3, shall actively promote Heliogen's Base CS Technology in Australia as part of the Product Offering to Australian Customers;

(b) Heliogen's grant to Woodside of the rights to be the exclusive marketer of Heliogen's Base CS Technology for the Exclusivity Uses in accordance with Section 4.2 are on the condition that, during the Exclusivity Period, Woodside shall refrain from, and shall cause its Affiliates to refrain from offering, marketing, acquiring, receiving, resupplying or delivering (or entering into any agreement regarding) plant, equipment or goods (or technical services related to the plant, equipment or goods) comprising Base CS Technology from other technology providers for the Exclusivity Uses;

(c) it will not make an offer or enter into any contractual arrangement that circumvents the restrictions on it under this Section 4.3.

The Parties acknowledge and agree the restrictions on Woodside in this Section 4.3 shall apply only to Woodside and its wholly-owned Affiliates in their corporate capacities and do not apply to any hydrocarbon joint ventures listed in Exhibit B so long as Woodside is a party to that joint venture.

4.4 Extension of Exclusivity Period

(a) At least 30 days prior to the Exclusivity Indicative Expiry Date, the Parties will meet to determine the matters in Paragraph 3 of Exhibit C and whether to extend the rights of exclusivity in this Article 4 and the Exclusivity Period.

(b) If contemporaneous activities occurring in the period before the Exclusivity Indicative Expiry Date are relevant to the matters in Paragraph 3 of Exhibit C and potentially impact the determination under Section 4.4(a), then:

(i) a standstill period shall automatically commence immediately prior to the Exclusivity Indicative Expiry Date for the sole purpose of permitting the matters in Paragraph 3 of Exhibit C to be assessed as part of any extension to the Exclusivity Period;

(ii) during the standstill period:

(A) the Parties' respective rights and obligations applicable immediately before the commencement of the standstill period shall continue if reasonably required to enable a Party to fulfil prior commitments made to an Australian Customer; and

(B) the Parties must use reasonable endeavours to finalise the determination or agreement on any extension as soon as practicable after the Exclusivity Indicative Expiry Date; and

(iii) unless an alternative date is agreed by the Parties, the standstill period will cease on the earlier of (A) when an outcome in Paragraph 4 of Exhibit C is determined to apply and (B) 20 Business Days after the Exclusivity Indicative Expiry Date.

ARTICLE 5
CONFIDENTIALITY

5.1 Confidential Information

Each Party acknowledges the competitive value and confidential nature of the Confidential Information.

5.2 Confidentiality in Development Agreement Continues to Apply

The Parties acknowledge and agree the entire article 10 (*Confidentiality*) of the Development Agreement (including the associated section cross-references and definitions used in those articles and defined in exhibit A of the Development Agreement) shall apply as if set out in full in this Agreement and with all necessary amendments, including in relation to:

(a) references to 'Confidential Information' so that it includes any information relating to or exchanged in connection with this Agreement that qualifies as Confidential Information and the requirement in Section 5.3;

(b) references to 'this Agreement' so that they include this Agreement; and

(c) the specific purposes authorized under article 10 so that they include the purposes of the Parties under this Agreement.

5.3 Confidentiality Obligations

The Parties acknowledge and agree that the fact that the Parties may be participating in discussions and negotiations with Australian Customers in relation to the Product Offering shall be included in the definition of 'Confidential Information' (as defined in the Development Agreement).

ARTICLE 6
INTELLECTUAL PROPERTY

6.1 Background Intellectual Property

(a) Each Party retains all right, title and interest in the following Intellectual Property Rights it owns or controls ("***Background Intellectual Property Rights***"):

(i) Intellectual Property Rights developed or existing prior to the Effective Date; and/or

(ii) Intellectual Property Rights arising after the Effective Date which the Party develops independently from the activities contemplated by this Agreement or other agreements executed by the Parties or their Affiliates.

(b) Nothing in this Agreement shall be construed as creating or transferring any property right or ownership interest in any Intellectual Property Rights of a Party (including Background Intellectual Property Rights) or in any Intellectual Property Rights of a Third Party.

6.2 Limited Contractual Licence of Intellectual Property

(a) Subject to Section 6.2(c), Woodside agrees that Heliogen, its Representatives and Affiliates may use materials containing Woodside's Intellectual Property Rights (including Woodside Work Product) that Woodside, its Representatives or Affiliates provide or make available under this Agreement if and to the extent required by Heliogen, its Representatives or its Affiliates to perform this Agreement and (if applicable) the Marketing Agreement or any Transaction Agreement.

(b) Subject to Section 6.2(c), Heliogen agrees that Woodside, its Representatives and Affiliates may use materials containing Heliogen's Intellectual Property Rights (including Heliogen Work Product) that Heliogen, its Representatives or Affiliates provide or make available under this Agreement if and to the extent required by Woodside to perform this Agreement and (if applicable) the Marketing Agreement or any Transaction Agreement.

(c) The rights granted by a Party under Section 6.2(a) or Section 6.2(b) (as applicable) constitute a contractual licence which is royalty free, non-exclusive non-transferrable, non-sublicensable, limited to Australia and will automatically expire when the other Party's rights and obligations underlying its requirement to use the relevant Intellectual Property Rights expire. Each Party may only exercise (and must procure its Representatives and Affiliates only exercise) the contractual licence granted by the other Party for the purposes of carrying the activities contemplated under this Agreement and (if applicable) the Marketing Agreement or any Transaction Agreement.

(d) Except as provided in Section 6.2, neither Party grants any rights under this Agreement, whether express or implied, or by operation of law, with respect to the ownership or use of its Intellectual Property Rights.

6.3 Developed Intellectual Property

(a) As between the Parties, the rights, title and interests (including all Intellectual Property Rights) to any improvements or changes to Heliogen's Base CS Technology that arise from a Party's activities under this Agreement (whether solely or jointly with others) will automatically and immediately, upon creation, vest in Heliogen.

(b) If a right, title or interest cannot fully vest on the basis agreed in Section 6.3(a), Woodside shall:

(i) be deemed to have assigned and fully disposed of the right, title or interest to Heliogen (or a designee or assignee that Heliogen has notified); and

(ii) provide written assignments from Woodside or a Woodside Affiliate (or reasonably procure a written assignment if provided by a Woodside Representative) as required for the relevant right, title or interest to vest in full.

(c) If the Parties engage with each other (solely or jointly with others including their respective Affiliates) to improve any proprietary aspects of the Product Offering (other than Heliogen's Base CS Technology) and Intellectual Property Rights arise from or are produced in the course of such engagement, whether patentable or not, then those Intellectual Property Rights relating to an improvement to any proprietary aspect of such Product Offering automatically shall be owned by the Party that owns the Background Intellectual Property Rights (and the other Party hereby presently assigns, sells and transfers to such Party all of its right, title and interest in any such improvements.

6.4 New Intellectual Property

If the Parties jointly conceive or develop or wish to engage with each other (solely or jointly with others including their respective Affiliates) to jointly conceive or develop any new proprietary process or product or services offerings or any other inventions or ideas, they or their Affiliates must enter into an agreement that sets out their respective rights, obligations and interests in any new Intellectual Property Rights that may arise.

6.5 Heliogen Work Product

Heliogen, Heliogen's Representatives and/or Heliogen's Affiliates may prepare or author certain written Technical Information, materials, calculations, books and records, computer files, or other tangible or digital media related to any Heliogen's Base CS Technology or other Heliogen components of the Product Offering (hereinafter individually or collectively referred to as the "***Heliogen Work Product***").

Notwithstanding that Heliogen may provide or Woodside may possess draft or final versions of any Heliogen Work Product, and without limiting Section 5 or Section 6.2(b), all Intellectual Property Rights created in or arising from such Heliogen Work Product shall immediately upon creation vest in and remain exclusively the property of Heliogen, Heliogen's Representative or Heliogen's Affiliate (as applicable).

6.6 Woodside Work Product

Woodside, its Affiliates and/or its Representatives may author or develop certain Technical Information, marketing materials, calculations, books and records, computer files, or other tangible or digital media related to components of the Product Offering (other than Heliogen's Base CS Technology or other Heliogen components of the Product Offering) (hereinafter individually or collectively referred to as the "***Woodside Work Product***").

Notwithstanding that Woodside may provide or Heliogen may possess draft or final versions of any Woodside Work Product, and without limiting Section 5 and Section

6.2(b), all Intellectual Property Rights created in or arising from such Woodside Work Product shall immediately upon creation vest in and remain exclusively the property of Woodside, Woodside's Representative or Woodside's Affiliate (as applicable).

ARTICLE 7
NOT USED

ARTICLE 8
PUBLICITY

No Party may make any public announcement, press release or other disclosure about the activities contemplated by this Agreement, this Agreement or the transactions contemplated hereby, except:

(a) Contemporaneous with execution of this Agreement and other agreements among the Parties or their Affiliates to be signed on or about the Effective Date, in which case the Parties will co-ordinate a public announcement by means of issuing a press release in an agreed form;

(b) After prior written approval by the other Party;

(c) If any portion of Confidential Information is required to be disclosed by subpoena, Law, litigation, or similar legal process, or to a Governmental Authority, Receiving Party will promptly inform Disclosing Party of the existence, terms, and circumstances surrounding such request, and before any such disclosure is required, so as to allow Disclosing Party to protect the Confidential Information, Receiving Party will consult with Disclosing Party on the advisability of taking legally-available steps to resist or narrow such request. The Receiving Party shall thereafter seek (where applicable) to obtain a protective order, and Receiving Party shall cooperate with Disclosing Party in its efforts to obtain a protective order, to restrict access to, and any use or disclosure of, the Confidential Information;

(d) To the extent required by stock exchange rules, but in either case only after consultation with the other Party, to the extent reasonably feasible, about the timing, method and content of such disclosure; and

(e) To its financiers, insurers and any bona fide potential purchaser of it or its assets that enters into a customary confidentiality agreement, and their professional advisors subject to a customary confidentiality agreement or if applicable a duty of confidentiality imposed by Law or contract for performance of such advisor's services.

ARTICLE 9
TAX MATTERS

9.1 General

(a) As between the Parties and for the purposes of this Agreement, each Party:

(i) retains full responsibility for and shall perform and discharge its own obligations relating to any Tax applied or imposed under any Tax law or by any Tax authority;

(ii) subject to Section 9.1(c), retains any entitlement to a claim or other benefit associated with its Tax obligations that may be available under any Tax law or allowed by any Tax authority; and

(iii) agrees to indemnify the other Party and hold the other Party harmless if the other Party incurs any cost or other liability in performing or defending the obligations of the responsible party relating to any Tax or enforcing the other Party's rights under this Article 9.

(b) The Parties agree Section 9.1(a):

(i) is not intended to increase or decrease the Tax liabilities of a Party in relation to this Agreement;

(ii) must be applied in a lawful manner;

(iii) is not limited by the provisions of Section 12.1; and

(iv) is limited to the activities directly required under this Agreement and shall not apply:

(A) in relation to any Transaction Agreement or any Potential Opportunity; and

(B) to any other agreement among the Parties or their Affiliates.

(c) The fact that a Party retains an entitlement as described in Section 9.1(a)(ii) does not create or shall not result in:

(i) a positive obligation on either Party to take steps that may be required for such claim or other benefit to inure to the entitled Party if such steps would likely require the other Party to incur costs, provide filings or other assurances or otherwise engage in conduct that is inconsistent with its own interests;

(ii) either Party owing a duty or becoming liable to the other at law for acts or omissions relating to the steps referred to in Section 9.1(c)(i); or

(iii) any offset or reduction of the indemnity obligations of a Party under Section 9.1(a)(iii).

9.2 GST

(a) Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("***GST Act***") have the same meaning in this clause.

(b) If any supply under this Agreement is a taxable supply, then subject to the supplier issuing a valid tax invoice to the recipient, the supplier may, in addition

to the amount payable recover from the recipient an additional amount on account of GST, such amount to be calculated in accordance with the GST Act.

ARTICLE 10
TERM AND TERMINATION

10.1 Effective Date

This Agreement comes into force on and from the Effective Date and continues until terminated under Section 10.2.

10.2 Termination

This Agreement terminates on the earlier to occur of:

(a) the end of the Exclusivity Period;

(b) the date that termination of this Agreement becomes effective in accordance with a written agreement of the Parties;

(c) the date of a termination notice issued by Woodside under Section 11.1(b)(iii) or by Heliogen under Section 11.1(b)(iv);

(d) the date of a termination notice issued by a Party to the other Party in relation to:

(i) an Assignment by the other Party in breach of Section 16.5; or

(ii) a Change of Control affecting the other Party; and

(e) 5 Business Days after the date of a termination notice issued by one Party for a material breach of this Agreement by the other Party, including a breach of Article 4 and Article 5 (but excluding breach of Section 11.1(b), any Assignment in breach of Section 16.5), which remains unremedied by the other Party after receiving a notice of breach and, either:

(i) if the material breach is curable, a reasonable opportunity (not to exceed 28 days) to cure the breach and implement measures to prevent reoccurrence; or

(ii) if the material breach is incurable, a reasonable opportunity (not to exceed 28 days) to discuss and agree on the amount of compensation for loss or damage that the material breach has caused the terminating Party (payment of which is in lieu of termination).

10.3 Continuing Rights and Obligations

Termination or expiration of this Agreement shall relieve, fully release and discharge the Parties of any further performance obligations arising under this Agreement, save and except for:

(a) any liability for breach occurring prior to the date of expiration or termination of this Agreement;

(b) any rights which accrued prior to the date of expiration or termination of this Agreement; and

(c) despite expiration or termination of this Agreement:

(i) each Party shall remain bound by the provisions of Section 5.1, Section 5.2 and Section 5.3 and Article 8 for 36 months from the date of expiration or termination of this Agreement;

(ii) Article 6, Section 11.1(e), Article 12 and Article 15 shall continue to apply in relation to matters or events occurring or relating to the period prior to termination; and

(iii) any other provision expressed to survive termination or expiry shall so survive.

ARTICLE 11
COMPLIANCE WITH LAWS

11.1 Business Ethics and Code of Conduct

(a) In relation to the activities contemplated under this Agreement, the Parties must at all times comply with the Corporate Code of Conduct and the Anti-Bribery and Corruption Policy.

(b) Each of Heliogen and Woodside represents and warrants that, with respect to or in connection with this Agreement: (i) neither it nor any of its Representatives or Affiliates have offered, received, authorised, promised or given, solicited or accepted, and none of the foregoing will offer, receive, authorise, promise or give or solicit or accept, to or from a Government Official or any other person, directly or indirectly, any payment, gift, service, thing of value or other advantage where such payment, gift, service, thing of value or other advantage would be an ABC Law Violation, and (ii) it will otherwise comply with the ABC Laws. If (iii) Heliogen, Heliogen Representatives or Heliogen Affiliates commits an ABC Law Violation then Woodside may terminate this Agreement, by giving written notice of termination to Heliogen or (iv) Woodside, Woodside Representatives or Woodside Affiliates commits an ABC Law Violation then Heliogen may terminate this Agreement, by giving written notice of termination to Woodside.

(c) For any co-operation and co-ordination between the Parties in the marketing and sale of the Product Offering throughout the term of this Agreement, the Parties shall continually monitor, cooperate and communicate with each other in good faith, in order to assess and consider any potential impact which the performance of this Agreement may have on any matters relating to competition Law or policy in Australia. Should either Party have any concerns relating to the application of competition Law or policy in the Australia with regard to any aspect of the performance of this Agreement, the Party must notify the other Party and discuss how to solve these concerns. Notwithstanding the foregoing, neither Party shall be restricted in any way from approaching or consulting on any aspect of the provisions or performance of this Agreement with the applicable competition authority of Australia.

(d) Each Party must immediately notify the other Party of any breach of Section 11.1(b) above.

(e) Each Party will (i) indemnify and hold the other Party harmless from and against any and all claims, damages, losses, penalties, costs and expenses arising from a breach of Section 11.1(b) above; and (ii) promptly respond in reasonable detail to any notice from the other Party reasonably connected with Section 11.1(b) above and furnish applicable documentary support for such response upon request from the other Party.

(f) Each Party agrees to (i) maintain adequate internal controls; (ii) properly record and report all transactions; and (iii) comply with all Applicable Laws (including ABC Laws), in connection with this Agreement and its contemplated activities.

(g) In the event that a Party breaches this Article 11, then notwithstanding any other provision in this Agreement the other Party may terminate this Agreement for breach on written notice to the first-mentioned Party, with immediate effect.

(h) Each Party shall retain all such records for at least twenty-four (24) months after the expiry or termination of this Agreement. Any independent, qualified representative appointed and authorised by a Party may, no more than once in any 12-month period and at its own expense, audit any or all relevant controls and associated records referred to in Section 11.1(f) in respect of the period being audited of the other Party in connection with this Agreement for the sole purpose of determining whether there has been compliance with Section 11.1(b). Any such audit shall occur on at least two weeks prior notice, and shall be reasonably conducted during the audited Party's normal business hours in such manner so as not to interfere with the normal business activities of that Party.

ARTICLE 12
LIABILITY

12.1 Notwithstanding any other provision of this Agreement (excluding Section 12.2) whether express or implied and to the maximum extent permitted under Applicable Law, in no event shall either Party or its Affiliates, whether by way of indemnity, as a result of breach of contract, breach of statutory duty, warranty, tort (including negligence), strict liability or any other legal theory, be liable under this Agreement to the other Party or the

other Parties Affiliates for any indirect, special or consequential damages or any loss of profits, loss of opportunity or loss of goodwill, and each Party ("***relevant Party***") hereby:

(a) releases the other Party and its Affiliates (including their officers, agents and employees) ("***indemnified Parties***") from any such liability in respect of its own claims; and

(b) agrees to defend and hold harmless the indemnified Parties from claims made against an indemnified Party by an Affiliate of the relevant Party.

12.2 Section 12.1 shall not apply:

(a) where such loss or damages results from the Gross Negligence or illegal act by a Party;

(b) to any such loss or damages claimed by, or the liability of a Party incurred to, Third Parties for which an indemnity is given under this Agreement; and

(c) for a Party's loss or damages resulting from a breach by or attributable to the other Party of its confidentiality obligations applicable under this Agreement or the Development Agreement.

ARTICLE 13
COSTS

Each Party shall be responsible for its own costs and expenses in relation to the preparation, negotiation and execution of this Agreement (together with any costs and expenses in relation to its obligations and responsibilities or arising from discussions undertaken pursuant to this Agreement including all travel costs incurred by the Party's representatives). Any fees and costs to be incurred in relation to any Third Party consultant or adviser engaged on a joint basis with prior written agreement by the Parties in connection with this Agreement shall be borne as agreed in connection with such approval by the Parties.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that as of the Effective Date:

14.1 It is duly incorporated and validly existing under the Laws of the jurisdiction of its incorporation and has full power, authority and legal right (including all Permits) to sign this Agreement, to perform its obligations thereunder and to consummate the transactions contemplated thereby. The signing of this Agreement, the performance of its obligations thereunder have been duly and validly authorised and approved by all necessary action on its part.

14.2 This Agreement has been duly and validly signed by its legal Representative and (assuming due execution by the other Parties hereto) constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms of this Agreement.

14.3 The signing of, and performance by it of its obligations under, this Agreement does not and shall not result in a violation of, or be in conflict with, any provision of its constitutional documents, result in a violation of, or be in conflict with, any term or provision of any Applicable Law applicable to or binding upon it or any of its property.

14.4 There is no claim, action, suit, proceeding, inquiry or investigation pending or, to the best of its knowledge, threatened against it before or by any Governmental Authority, which purports to affect the transactions contemplated hereby or materially and adversely affect its ability to perform its obligations under this Agreement, nor, to the best of its knowledge, is there any reasonable basis for any such claim, action, suit, proceeding, inquiry or investigation.

14.5 Without limiting Section 11.1(c), the signing and performance of this Agreement by it does not and shall not require any additional consent, approval, authorisation, or other order of, or action by, any Governmental Authority or any Third Party.

ARTICLE 15
GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Governing Law

This Agreement (including the arbitration agreement and the expert determination in this Article 15) and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by and construed in accordance with the law of England and Wales.

15.2 Resolution of Disputes

(a) Any dispute arising out of or in relation to this Agreement, including any question regarding its existence, validity, breach or termination ("***Dispute***") shall be settled or resolved in accordance with this Agreement. Unless another requirement applies, each Dispute which cannot be resolved by amicable negotiations of the Parties' senior representative within 30 days of a dispute notice must be referred to arbitration before three arbitrators appointed and arbitrating in accordance with arbitral rules (effective 1 October 2020) of the LCIA (the "***Rules***") in accordance with the following principles:

(i) The venue of arbitration and the seat of the arbitration shall both be London;

(ii) The proceedings shall be in the English language; and

(iii) The resulting arbitral award shall be final and binding, and may be enforced in any court having jurisdiction thereof. To the maximum extent permissible in Applicable Law, the parties irrevocably waive any and all rights of appeal from the arbitral award.

(b) To the extent that interim or conservatory measures are reasonably required by a Party and are not readily available under arbitration contemplated in this Section 15.2 such Party may seek interim or conservatory relief in a court of competent jurisdiction and the taking of steps in support or defense of an application for such relief shall not constitute a waiver of the right to have Disputes settled by arbitration under this Section 15.2.

(c) The Parties must not refer a Dispute involving questions of law, the legal rights or obligations of the Parties or other substantive legal issues for resolution by an expert under Section 3.7(d) or Section 15.4. If an arbitral award sets aside an expert's determination of a Section 3.7 Dispute based on fraud, the Parties will cease to be bound by the determination and a Party is permitted to set aside such determination by giving notice to the other Party (and such Section 3.7 Dispute shall again be subject to resolution by an expert as provided in Section 3.7).

15.3 Court Proceedings

Notwithstanding Section 15.2, each Party may institute formal court proceedings at any time (in any court in any country) exclusively (a) in support of (including actions to compel) arbitration proceedings carried out with respect to the resolution of any Dispute in accordance with Section 15.2 (and as permitted by the Rules or, as applicable, the *Arbitration Act 1996* (UK) or (subject to Section 15.2(c)) in support of (including actions to compel) the expert determination process, (b) as necessary to enforce any arbitrational award or expert determination relating to this Agreement, (c) with respect to any matter for which the LCIA does not exercise jurisdiction, (d) for interlocutory, injunctive or other urgent relief (including as described in Section 15.2(b)) or to compel performance of the Parties obligations under this Agreement, or (e) as necessary to enjoin any (i) infringement of a Party's Intellectual Property Rights, (ii) breach of the confidentiality provisions set forth in Article 5 or (iii) breach of the publicity provisions set forth in Article 8.

15.4 Expert Determination

The following provisions apply to any Section 3.7 Dispute, disagreements on matters under Exhibit C that the Parties both agree to refer to an expert for final and binding determination and other disagreements (if any) that the Parties both agree to refer to an expert for final and binding determination:

(a) the Parties must endeavour to select an expert that meets the requirements of this Agreement within 15 Business Days of a notice from either Party requesting determination by an expert;

(b) if the Parties are unable to agree the identity of the expert, either Party may request the CEDR to select the expert (or if the CEDR is unavailable, another competent, impartial nominating authority based outside of Australia and the United States as the Parties may agree) within 30 days of the requesting Party's notice;

(c) an expert appointed for the purposes of this Agreement:

(i) must be independent of the Parties and capable of performing the role of an expert impartially. Unless agreed in writing by both Parties, a person will be disqualified from being appointed an expert if the person:

(A) has been an employee of a Party or any of its Affiliates at any time during the previous 5 years;

(B) is or has been engaged personally as an advisor, consultant or other service provider of a Party or any of its Affiliates at any time during the previous 12 months; or

(C) holds a direct material financial interest in either Party;

(ii) must be bound by confidentiality obligations under the terms of its appointment which at least as onerous as those of the Parties under this Agreement and undertake to keep strictly confidential any information about its appointment, its determination and any other disclosure during or matter relating to the proceedings;

(iii) must act as an expert and not as an arbitrator, a mediator, an adjudicator or an advisor. The expert must not be taken to be an arbitrator under any applicable arbitration Laws, which the Parties agree do not apply to the expert;

(iv) must be required under the terms of its appointment to comply with the applicable processes and requirements in this Agreement, including the requirements in Section 3.7(d) if applicable to the matters to be determined. The role of the expert is to produce a binding determination; and

(v) must be paid by the Parties in equal proportions and on the same commercial terms to be set out in the expert's appointment agreement;

(d) except in relation to Section 3.7 Disputes to the extent inconsistent with the applicable Section 3.7 Dispute procedure:

(i) the expert may reasonably request data, information or submissions respecting relevant information the expert finds necessary to make a determination, and the Parties will comply promptly with such requests, provided all written submissions and other information supplied to the expert must also be provided simultaneously to the other Party and the expert must return or destroy materials it receives expect as permitted in its appointment;

(ii) the expert may allow each Party reasonable opportunity to make oral submissions and/or written submissions (not exceeding 10 pages excluding reasonable attachments and exhibits) and to respond to the other Party's submissions;

(iii) the expert must reach a determination and deliver to both Parties a statement specifying its conclusions and providing its reasons in support

within 30 days after the date of its appointment (or any longer period that the Parties agree); and

(iv) the expert may determine its own procedures if not specified in this Agreement or the expert's appointment (or otherwise in circumstances where the Parties are unable to agree);

(e) if the expert has failed to make a determination within 60 days after the date of its appointment, either Party may terminate the expert process and request a new expert is appointed in accordance with this Section 15.4 to determine the matter;

(f) except in the event of fraud, the determination of the expert shall be final and binding upon the Parties and must be promptly implemented by the Parties. An arbitral panel appointed in accordance with Section 15.2 has jurisdiction to set aside an expert determination due to fraud (without limiting any other civil or criminal legal proceedings that may be commenced and provided that any such referral of an expert's determination does not relieve the Parties from implementing or complying with the determination of the expert); and

(g) each Party shall bear its own costs and expenses of engaging advisors and consultants it retains and complying with the expert's determination.

ARTICLE 16
MISCELLANEOUS

16.1 Further Action

The Parties hereby agree to cooperate and use all reasonable endeavours to take, or cause to be taken, all appropriate actions reasonably necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

16.2 Amendment

No amendment to this Agreement shall have any force or effect unless it is in writing and signed by each of the Parties.

16.3 No Implied Waiver

(a) Nothing shall be construed as a waiver under this Agreement unless a document to that effect has been signed by the relevant Party or Parties intending to be bound by the terms of the waiver.

(b) A waiver by one of the Parties of any of the provisions of this Agreement or of any breach of or default by the other Party in performing any of those provisions (including the granting by a Party to the other Party of an extension of time in which to perform its obligations under any provision hereof) shall not constitute a continuing waiver and the waiver shall not prevent the waiving Party from subsequently enforcing any of the provisions of this Agreement not waived or from acting on any subsequent breach of or default by the other Party under any of the provisions of this Agreement.

16.4 Notices

(a) Any notice or other communication to be given under this Agreement ("***notice***") shall be given in writing in English and may be delivered in person or sent by FedEx (or other reputable international courier), or electronic mail to the address of the relevant recipient Party set forth below.

For the purposes hereof, the addresses of the Parties shall be as specified below:

(i) for Heliogen:

Heliogen Holdings, Inc.
130 West Union Street
Pasadena, California 91103

Attention: Ms Christie Obiaya
Email: […***…]
CC Email: […***…]
CC Email: […***…]; and

(ii) for Woodside:

Woodside Energy Technologies Pty Ltd
Mia Yellagonga Building
11 Mount Street
Perth Western Australia 6000

Attention: Mr Jason Crusan
Email: […***…]
CC Email: […***…]
CC Email: […***…],

or at such other address as the Party to be given notice may have notified to the other Party from time to time in accordance with this Agreement as its address for receiving notices.

(b) Any notice shall be deemed to be given:

(i) if delivered in person, at the time of delivery; or

(ii) if sent by reputable international courier, at 10:00 a.m. six (6) Business Days after it was deposited with such international courier; or

(iii) in any other case on the date of transmission; *provided* that if a notice is sent by electronic mail, delivery of the notice occurs at the time the relevant email is transmitted, unless the relevant sender receives a notice that delivery of the email has failed or been delayed and/or the sending Party did not also furnish a hard copy of such notice by registered mail within forty-eight (48) hours of the time and date such electronic mail was sent.

(c) In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication

was properly addressed and posted or that the email was properly addressed and transmitted.

16.5 Transfer and Assignment

(a) This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of each Party. Neither Party shall assign or otherwise transfer (collectively, an "***Assignment***") this Agreement or any of its rights or obligations hereunder without the express prior written consent of the other Party, *provided, however*, that either Party (the "***Assigning Party***") may assign its rights (but not its obligations) under this Agreement without obtaining such prior written consent to any Affiliate of the Assigning Party, *provided* that Assignment to such Affiliate shall not relieve the Assigning Party of its obligations under this Agreement.

(b) Any attempted Assignment in violation of this Section 16.5 shall be null and void in all respects, and the Assigning Party shall be liable to the other Party for all damages incurred by such other Party as a result of such attempted Assignment.

16.6 No Partnership

Each Party covenants and agrees that in the performance of its obligations under this Agreement, it shall not perform any act or make any representation to any Person to the effect that it, or any of its agents, Representatives or employees, is the agent for any other Party. This Agreement does not create, and shall not be deemed to create, any partnership, joint venture or agency relationship between the Parties. Without limiting the express provisions of any written agreement that may be entered into by the Parties pursuant to Section 3.7, the Parties intend to create only a contractual relationship as set forth in this Agreement. Nothing herein (including any activities heretofore taken by the Parties or communications had or to be had with Third Parties relating to the transactions contemplated hereby) is intended to or will create or establish any partnership, joint venture or similar arrangement between the Parties. No Party shall hold itself out to be in a partnership, joint venture or similar arrangement with the other Party. No Party may assert, and each Party expressly waives any rights to assert, under any Applicable Law, that a partnership, joint venture or similar arrangement exists based upon this Agreement or any action taken pursuant to this Agreement (but without limiting the express provisions of any written agreement that may be entered into by the Parties pursuant to Section 3.7.

16.7 Rights and Remedies

Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative, and not exclusive of any rights and remedies provided by Applicable Law.

16.8 Entire Agreement

(a) This Agreement and the Development Agreement contain the entire understanding and agreement between the Parties with respect to their respective subject matters and supersede all prior oral and written agreements. Execution of this Agreement supersedes all contemporaneous oral negotiations, commitments

and prior understandings between the Parties in relation to their collaboration activities relating to the Product Offering for Australian Customers.

(b) Each of the Parties acknowledges that it does not enter into this Agreement in reliance upon any representation, warranty, collateral contract or other assurance not fully reflected in this Agreement or in the executed agreements referred to in it made by or on behalf of the other Party and each of the Parties waives all rights and remedies which, but for this Section 16.8, might otherwise be available to them in respect of any such representation, warranty, collateral contract or other assurance; *provided* that nothing in this Section 16.8 shall limit or exclude any liability for fraud.

16.9 Severability

The provisions contained in each Section of this Agreement shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

16.10 Rights of Third Parties

A Person who is not a Party to this Agreement may not enforce any of its terms under the *Contracts (Rights of Third Parties) Act 1999* (UK) or other Applicable Law unless this Agreement expressly confers on that Person a right or benefit that can be enforced by that Person.

16.11 Mutuality of Drafting

No rule of construction applies to the disadvantage of a Party because that Party was responsible for preparing, or seeks to rely on, a provision of this Agreement. The Parties hereby stipulate and agree that each of them fully participated and was adequately represented by counsel in the negotiation and preparation of this Agreement.

16.12 Counterparts

This Agreement may be executed electronically and in multiple counterparts, each of which taken together shall constitute one and the same agreement, and either Party may enter into this Agreement by executing a counterpart.

16.13 Risk of Failure

Other than as expressly allocated in this Agreement, each Party recognizes and assumes the commercial risks associated with the Joint Objectives, the Product Offering and the Heliogen's Base CS Technology. Each Party individually assumes the risks that:

(a) construction of any project pursuant to this Agreement may not be completed for several reasons; and

(b) an individual project, if construction is undertaken, may never start-up or achieve acceptable operating goals and objectives despite Heliogen fulfilling all of its respective contractual obligations relating thereto.

16.14 Information Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) ALL CONFIDENTIAL INFORMATION IS PROVIDED WITH NO WARRANTY AND (B) NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties, intending to be legally bound, have caused this Agreement to be executed as an agreement by their duly authorized officers as of the Effective Date.

EXECUTED by **WOODSIDE ENERGY TECHNOLOGIES PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

/s/ Shaun Gregory
.....
Signature of director

SHAUN GREGORY
.....
Name of director (block letters)

/s/ Caitlin Morris
.....
Signature of ~~director~~/company secretary*
*delete whichever is not applicable

CAITLIN MORRIS
.....
Name of ~~director~~/company secretary* (block letters)
*delete whichever is not applicable

SIGNED)

for and on behalf of)

HELIOGEN HOLDINGS, INC.)

By: /s/ Bill Gross

Name: Bill Gross

Title: CEO

EXHIBIT A
DEFINITIONS

The following terms shall have the following meanings in this Agreement of which this Exhibit A is a part unless the context requires otherwise.

"***ABC Laws***" means: (a) any anti-corruption Law of the Commonwealth of Australia or the State of Western Australia (including any applicable written Law); (b) the Foreign Corrupt Practices Act of 1977, Pub L No 95-213, §78dd-1 1977 Stat 149; (c) the Bribery Act 2010 (UK) c 23; and (d) any anti-corruption Law of a country which applies to the respective Parties or in relation to this Agreement (and the activities thereunder).

"***ABC Law Violation***" means a situation where a Party or its Representatives or Affiliates have: (a) directly or indirectly offered, paid, solicited or accepted bribes in any form, including facilitation payments; or (b) otherwise breached any ABC Law.

"***Affiliate***" means, in respect of a Person, any Person Controlling, under common Control with, or Controlled by such Person.

"***Agreement***" has the meaning set forth in the preamble and Section 1.3.

"***Anti-Bribery and Corruption Policy***" means the anti-bribery and corruption policy located at https://www.woodside.com.au/about-us/corporate-governance.

"***Applicable Laws***" means all constitutional, common and civil laws, equity, statutes, regulations, rules, ordinances, policies, Permits, orders, judgments and any interpretation of any of the foregoing, of any Governmental Authority ("***Laws***"), in each case, applicable to any of the Parties or this Agreement.

"***Assigning Party***" has the meaning set forth in Section 16.5(a).

"***Assignment***" has the meaning set forth in Section 16.5(a).

"***Australian Customer***" has the meaning set forth in Section 3.1.

"***Background Intellectual Property Rights***" has the meaning set forth in Section 6.1(a).

"***Base CS Technology***" means the following components of a 'central tower' CS facility:

(a) the solar field, comprising heliostats including frames, ground mounts and layout, calibration and control systems including actuators, cameras, sensors and software, and auxiliary systems including electrical, communications, back-up power and cleaning systems; and

(b) the receiver and tower, comprising a solar receiver, weather shield and radiation enclosure, a tower supporting the receiver and receiver control systems,

but does not include any components of CS technology which are 'downstream' of paragraphs (a) and (b) above including CS Thermal Storage, CO2 system or power block or other types of CS technology (such as parabolic trough, parabolic dish and linear Fresnel systems).

"***Business Day***" means a day (other than a Saturday or Sunday) on which banks are generally open in both of Perth, Australian and New York, United States for normal interbank business.

"***Capella Solar Plant***" has the meaning set forth in the recitals.

"***Capella Solar Plant Completion***" means the stage of progress in the construction of the Capella Solar Plant where the Capella Solar Plant passes the requirements for 'Mechanical Completion' as defined in the Commercial Scale Demonstration Agreement and evidenced by the corresponding certificate issued in accordance with the Commercial Scale Demonstration Agreement.

"***CEDR***" means the Centre for Effective Dispute Resolution Limited, a private company limited by guarantee without share capital incorporated in the United Kingdom with company number 02422813 and registered address 100 St. Paul's Churchyard, London, England, EC4M 8BU.

"***Change of Control***" means, with respect to a Party, a transaction (including a merger) that causes such Party no longer to be Controlled by the company that was its ultimate parent entity immediately prior to such transaction, but excludes any transaction announced by a Party prior to the Effective Date or any reorganisation or corporate restructure that results in an entity that completes an initial public offering and becomes a publicly-traded entity Controlling a Party.

"***CO2***" means carbon dioxide.

"***Commercial Scale Demonstration Agreement***" has the meaning set forth in the recitals.

"***Control***" means ownership, directly or indirectly, of more than fifty percent (50%) of the shares conferring the right to vote at a general meeting (or its equivalent) of such entity or otherwise to appoint the majority of the directors or other governing body of such entity, and the words "***Controlling***" and "***Controlled***" shall be construed accordingly.

"***Corporate Code of Conduct***" means the supplier code of conduct located at https://www.woodside.com.au/suppliers.

"***CS***" means concentrated solar energy (whether for electrical and/or thermal output).

"***CSP***" means CS for electrical output.

"***CS Thermal Storage***" means thermal energy storage systems as a component of a CS facility, including the receiver loading system (including hoppers, silos, packed beds and chutes), particulate or gas accumulators and storage vessels, primary heat exchangers (including valve actuators and controllers) and associated control systems, infrastructure and equipment.

"***Customer SPA***" means any of the following documents prepared for a specific Australian Customer in relation to the sale and purchase of Heliogen's Base CS Technology:

(c) commercial proposals, term sheets and interim agreements (whether or not legally binding); and

(d) any fully termed sale and purchase agreement or other procurement or supply contract among the Parties or Heliogen (as the case may be for the Project Offering) and the Australian Customer.

"***Dispute***" has the meaning set forth in Section 15.2.

"***DNI***" means direct normal irradiation, expressed annually in kWh/m^2 based on a typical meteorological year as reported by SolarGIS (including any wholly owned or controlled affiliate of 'Solargis s.r.o.' a Slovak Republic company registered with the number 45 354 766 in the company registry of the district court of Bratislava 1).

"***Exclusivity Indicative Expiry Date***" means the date occurring 18 months after Capella Solar Plant Completion.

"***Exclusivity Period***" has the meaning set forth in Section 4.1.

"***Government Official***" has the meaning given to it in the Anti-Bribery and Corruption Policy.

"***Gross Negligence***" means any act or omission by an actor departing from the ordinary standard of care applicable to the actor to such an extent that it creates an extreme degree of risk to property, people, the environment or of harming the rights and interests of others (viewed objectively from the actor's standpoint) and in circumstances where the actor, having subjective awareness of the risk involved, choose to proceed in conscious indifference to the consequences that it knew or should have known would result, but excludes errors of judgment made in good faith.

"***Heliogen***" has the meaning set forth in the preamble.

"***Heliogen Work Product***" has the meaning set forth in Section 6.5.

"***Heliogen's Base CS Technology***" means the Base CS Technology which is subject to Intellectual Property Rights owned, controlled or under license by Heliogen, including all patent rights related and Technical Information.

"***Improvements***" means any and all improvements or modifications to Background Intellectual Property Rights which are developed, created or conceived by or on behalf of a Party in connection with performance of this Agreement or other agreements between the Parties or their Affiliates.

"***Insolvency Event***" means in relation to a Party any action (including any meeting of shareholders, members, directors or other officers being convened, legal proceedings (including the presentation of any petition or the filing of any document with a court or registrar or any order or judgment being made)) or other procedure or step taken in relation to the following (except as part of a solvent reorganisation or corporate restructure):

(e) a moratorium of any financial indebtedness of a Party;

(f) a winding-up, dissolution, supervision, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Party;

(g) a Party files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar Law for the protection of creditors or has such petition filed or proceeding commenced against it;

(h) a Party otherwise becomes bankrupt or insolvent (however evidenced);

(i) a composition, compromise, assignment or arrangement with or for the benefit of any creditor of a Party;

(j) the appointment of a liquidator, receiver, trustee in bankruptcy, judicial custodian, administrative receiver, administrator, compulsory manager or other similar officer in respect of a Party or any of its assets; or

(k) any analogous procedure or step taken in any jurisdiction.

"***Intellectual Property Rights***" means all of the following rights, title, or interest in or arising under the Laws of any country, state, or international treaty regime, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired, including all renewals thereof: (i) patents, patent applications and patent rights, including any such rights granted upon any reissue, re-examination, division, extension, provisional, continuation or continuation-in-part applications, and equivalent or similar rights anywhere in the world in inventions and discoveries; (ii) rights associated with works of authorship and literary property, including copyrights, copyright applications and copyright registrations, and moral rights; (iii) rights relating to trade secrets, confidential information, and know-how, including ideas, concepts, methods, techniques, inventions (whether patentable or unpatentable), technical information and other works, whether or not developed or reduced to practice, and rights in confidential or proprietary information; (iv) trademarks, service marks, trade names, slogans, domain names, logos, trade dress, and other indicia of source (including all goodwill associated with the foregoing), and registrations and applications for registrations thereof; and (v) all other intellectual property rights.

"***Joint Objectives***" has the meaning set forth in the recitals.

"***kW***" means kilowatt, being 1,000 watts.

"***LCIA***" means 'London Court of International Arbitration' and includes the 'LCIA Court' as defined in the Rules.

"***MWh***" means kilowatt hour, being the rate at which one kW of electricity is used during the period of one hour.

"***Negotiation Period***" has the meaning set forth in Section 3.6(b).

"***notice***" has the meaning referred to in Section 16.4.

"***m^2***" means the area equal to a square that is one meter on each side.

"***Marketing Agreement***" means an agreement to be entered into by the Parties for the purposes of detailing the methods, practices, commercial structure and other terms for marketing the Product Offering in Australia, engaging with Australian Customers and concluding binding arrangements in respect of a Potential Transaction.

"***Party***" means Heliogen or Woodside, individually; "***Parties***" means both Heliogen and Woodside.

"***Potential Transaction***" means the potential sale or purchase of:

(l) the Product Offering to or by an Australian Customer; or

(m) Heliogen's Base CS Technology (with or without any other Heliogen component of the Product Offering) to or by Woodside or its Affiliate.

"***Primary Taxpayer***" has the meaning set forth in Section 9.1(a).

"***Product Offering***" has the meaning set forth in Section 3.2.

"***Qualifying Site***" means a project site with the following characteristics:

(a) a minimum DNI of […***…] kWh/m^2;

(b) an area of land sufficient to accommodate a heliostat solar field in an approximately circular array which, on a design basis, is sized at […***…] acres per MW thermal of capacity;

(c) the location of the site is adjacent to the delivery point for energy to the Australian Customer; and

(d) the site is generally appropriate for construction of a heliostat solar field, including 5% overall grade or less (based on the site 'rise' and 'run'), open land with no major obstructions and not in an area prone to sustained or seasonal wind events of category 2 or more on the 'Saffir-Simpson Hurricane Wind Scale'.

"***Representative***" means, with respect to any Person, each manager, director, officer, employee, agent, consultant (including consulting engineers), advisor (including counsel and accountants) and other representative of such Person.

"***Rules***" has the meaning set forth in Section 15.2(a).

"***Section 3.7 Dispute***" has the meaning set forth in Section 3.7(d).

"***Tax***" or "***Taxes***" means any taxes, assessments and other governmental charges in the nature of a tax imposed by any Governmental Authority, including with respect to income, profits, gross receipts, ad valorem, real property, personal property, transfer, value added, sales, use, customs, duties, capital stock, franchise, excise, withholding, windfall profit, severance, production, estimated or other tax, including any interest, penalty or additional liability thereto.

"***Technical Information***" means specifications, descriptions, software, design or engineering documents, process documents, models, mock-ups, technical information, data, and inventions (whether or not patented), as well as know-how, trade secrets and all materials of a technical nature which are subject to Intellectual Property Rights relating to the design, engineering, manufacture, installation, construction, implementation, commissioning, completion, integration, ownership, expansion, operation or maintenance of or requirements for a Heliogen-supplied component of the Product Offering (including Heliogen's Base CS Technology) or a Woodside-supplied component of the Product Offering.

"***Third Party***" means any person or entity other than a Party or an Affiliate of a Party.

"***Transaction Agreement***" has the meaning set forth in the recitals.

"***Woodside***" has the meaning set forth in the preamble.

"***Woodside Work Product***" has the meaning set forth in Section 6.5.

EXHIBIT B

EXISTING WOODSIDE JOINT VENTURES

[…***…]

EXHIBIT C

EXCLUSIVITY METRICS (SECTION 4.4)

[…***…]

Exhibit 10.2

"CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY […***…], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT HELIOGEN, INC. TREATS AS PRIVATE OR CONFIDENTIAL"

COMMERCIAL SCALE DEMONSTRATION AGREEMENT

for the

CAPELLA SOLAR PROJECT

by and between

WOODSIDE ENERGY (USA), INC., as Owner

and

HELIOGEN HOLDINGS INC., as Company

dated as of

March 28, 2022

TABLE OF CONTENTS

EXHIBITS

COMMERCIAL SCALE DEMONSTRATION AGREEMENT

This **Commercial Scale Demonstration Agreement** (this "Agreement") is made, entered into and effective as of March 28, 2022 (the "Effective Date"), by and between WOODSIDE ENERGY (USA), INC. a Delaware corporation("Owner"), and HELIOGEN HOLDINGS INC., a Delaware limited liability company ("Company").

RECITALS

A. Owner intends to develop a concentrated solar testing, research and development facility named the Capella Solar Project (defined as the Project below) to be located in Kern County, California, on real property that will be owned by the Owner following Substantial Completion for the purposes of demonstrating and developing larger scale power generation facilities to be developed, engineered, procured and constructed under separate agreement(s) between the Parties.

B. In connection with such Project, Owner desires to obtain, and Company desires to provide, certain work including design, engineering, procurement, installation, construction, start-up, testing and commissioning, and related services for the Project all for the Contract Price (as hereinafter defined).

C. NOW, THEREFORE, the Parties agree as follows:

ARTICLES I
DEFINITIONS

1.1 Definitions.. As used in this Agreement, the following terms have the meanings indicated:

"Additional Equipment" has the meaning set forth in Section 2.6.1.

"Affiliate" means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person or by a Person that directly or indirectly beneficially holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word "controls" means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

"Agreement" has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

"Applicable Laws" means any applicable act, statute, law, regulation, Permit (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, or any similar form of decision or determination by, or any interpretation of, any of the foregoing by any Government Authority with jurisdiction over Company, Owner, the Project, the Project Site, the performance of the Work or other services to be performed under this Agreement, and includes any of the same as they may be amended or imposed from time to time.

"Applicable Permits" means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work and operation of the Project.

"Applicable Program" means a domestic, international or foreign renewable portfolio standard, renewable energy, emissions reduction or other report rights program, scheme or organization, adopted by a utility or Government Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes. An Applicable Program includes any legislation, regulation, or voluntary program concerned with renewable energy, air emissions including oxides of nitrogen, sulfur, carbon dioxide and other greenhouse gas emissions, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change or the Kyoto Protocol thereto or crediting "early action" with a view thereto, or laws or regulations involving or administered by an administrator of such programs, or under any present or future domestic, international or foreign renewable energy credits, Environmental Attributes or emissions trading program. Applicable Programs do not include legislation providing for tax credits or other direct third-party subsidies for generation of electricity by or development of a renewable energy source.

"Approval Criteria" means (i) the Company possesses all real property rights required for the construction, operation and maintenance of the Project, (ii) such real property rights are readily transferable to the Owner in accordance with the terms of Section 6.1 without requiring the consent of any third parties, (iii) the Project Site, and the Company's interest therein, is, and after Final Completion will be, encumbered by no Liens except Permitted Liens and, prior to Final Completion, the DOE Lien, (iv) all Entitlements necessary under Applicable Law for the construction, operation and maintenance of the Project on the Project Site have been obtained and all appeal and contest periods with respect thereto have expired, and (v) all Governmental Authorizations and Permits necessary under Applicable Law for the construction, operation and maintenance of the Project on the Project Site have been obtained and all appeal and contest periods with respect thereto have expired.

"Arbitration Notice" has the meaning set forth in Section 15.1.

"As-Built Drawings" means final Drawings for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings, including in reasonable detail the physical placement and location of all improvements, including related equipment, roads, overhead electric transmission lines, collection lines, communication lines (both above and below ground), electric one-line drawings, electric schematics and connection diagrams.

"As-Built Survey" means an ALTA as-built survey in form and substance acceptable to Owner in its sole discretion showing (A) the location and dimension of the land and all

easements comprising the Project Site, including (i) the location of all means of access thereto and all easements relating thereto and (ii) showing the location of all improvements, including, without limitation, all utility facilities servicing the Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (B) that the improvements are in compliance with all applicable building and setback lines and do not encroach, interfere with, or constitute a breach under adjacent property or existing easements, restrictions or other encumbrances or other rights, and that there are no gaps, gores, projections, protrusions or other survey defects; (C) whether the land underlying any improvements pertaining to the Project is located in a special earthquake or flood hazard zone; (D) all encumbrances affecting the Project Site, including, without limitation, encumbrances described in the Title Policy, and (E) that there are no other matters constituting a material defect in title.

"Basis of Design (BOD)" means the document that captures the principles, assumptions and considerations used for calculations and decisions required during design. The BOD describes the technical approach planned for the Project and is incorporated into the Project technical specifications. The BOD is used as the basis for design calculations and other design decisions.

"Business Day" means any day other than a Saturday, Sunday or a day which is a legal Federal holiday in the United States or under Applicable Laws.

"Change" has the meaning set forth in Section 10.1.

"Change in Applicable Law" means any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (including any change in interpretation of Applicable Law) that occurs, takes effect, is enacted or is issued after the Effective Date affecting Company, Owner, Subcontractor, the Project, the Project Site, the performance of the Work or other services to be performed under this Agreement; *provided* that any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (including any change in interpretation of Applicable Law) (a) which was passed by the applicable Government Authority on or prior to the Effective Date but not effective until after the Effective Date, (b) constituting a change in federal, state or local income tax law, (c) constituting a change in the requirements for obtaining or maintaining any Applicable Permit, and (d) any periodic revision of the monthly minimum wage shall not be deemed a Change in Applicable Law.

"Change Order" means a material Change in the Scope of Work as memorialized in accordance with the form set forth in Exhibit K-2.

"Change Order Dispute Engineer" means any qualified individual possessing reasonable subject matter expertise with respect to an applicable Change Order who is mutually agreed upon by Owner and Company to act as the Change Order Dispute Engineer. If the Parties cannot agree on an engineer to so designate, Company shall request a recommendation from the American Arbitration Association and the Change Order Dispute Engineer shall be an engineer nominated by the American Arbitration Association from among those of its personnel qualified to perform this function.

"Change Order Request" has the meaning set forth in Section 10.2.1 and shall be in the form set forth in Exhibit K-1.

"Company" has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees as may be approved by Owner, in writing, pursuant to the terms of this Agreement.

"Company Deliverables" means all As-Built Drawings, Drawings, Job Books, Operating Manuals, all written comments, field changes, and redlined drawings for incorporation into the final As-Built Drawings, and other documents and similar information prepared or modified by Company or any of its Subcontractors and delivered or required to be delivered hereunder.

"Company Event of Default" has the meaning set forth in Section 13.1.1.

"Company Indemnified Parties" has the meaning set forth in Section 12.1.2.

"Company Intellectual Property Rights" means the Heliogen Background Intellectual Property Rights, the Developed CSP Intellectual Property, and any and all improvements or modifications to the Heliogen Background Intellectual Property Rights or the Developed CSP Intellectual Property.

"Company Parent Guaranty" has the meaning set forth in Section 2.26.

"Company Permits" means all Applicable Permits except those required to be obtained by Owner as set forth in Exhibit G.

"Company Termination for Cause" has the meaning set forth in Section 13.2.

"Company's Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Company and its Subcontractors for performance of the Work, but which are not intended to be incorporated into the Project.

"Company's Project Manager" means the Person so appointed by Company pursuant to Section 2.11.1.

"Company's Rate Schedule" shall mean those rates and costs set forth in Exhibit B-2.

"Completion Cost" has the meaning set forth in Section 13.1.2.

"Confidential Information" has the meaning set forth in Section 16.4.1.

"Consequential Damages" has the meaning set forth in Section 14.1.

"Consumable Parts" has the meaning set forth in Section 2.5.

"Contract Price" means Fifty Million ($50,000,000) US Dollars.

"Critical Issues Analysis" means the Critical Issues Analysis for the Project dated May 2021 and prepared by SWCA Environmental Consultants.

"Day" or "day" means a period of twenty-four (24) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all holidays Pacific prevailing time.

"Defect" or "Defective" means any condition, characteristic or item of the Work that (a) does not conform to the Specifications, (b) is not of uniform good quality, free from defects or deficiencies in design, manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous safe operation of the Project, or (iii) the structural integrity of the Project.

"Delay" means any event, occurrence, act or omission that impairs, delays, hinders, impedes, or disrupts Company's, or its Personnel's, ability to perform the Work according to the Project Schedule or achieve the Guaranteed Mechanical Completion Date, Guaranteed Substantial Completion Date or any other Key Milestone Date, in the time required.

"Delivery Notice" has the meaning set forth in Section 2.7.1(b).

"Design Delivery Schedule" shall mean the schedule for the delivery of Drawings set forth in Exhibit C-3.

"Detailed Engineering" means to perform multiple discipline design activities and produce documents in support of procurement, construction, commissioning and startup. The major deliverables from detailed engineering are Issue for Permit (IFP), Issue for Construction (IFC) and Procurement Documents.

"Developed CSP Intellectual Property" has the meaning set forth in the Development Agreement.

"Development Agreement" means that certain Development Agreement by and between the Heliogen Inc. and Woodside Energy (USA) Inc. dated as of December 24, 2020.

"Direct Cost(s)" has the meaning set forth in Section 10.5.3(c).

"DOE" means the United States Department of Energy.

"DOE Lien" means any lien or encumbrance on the Project Site, Project, Equipment or any assets of the Project or Company in favor of the DOE as a result of financing provided by the DOE for the Project.

"DOE Test Completion" shall mean that all DOE Tests have been conducted and completed in accordance with, and meeting the criteria for passing such DOE Tests as set forth in, Exhibit O-3.

"DOE Tests" means the testing of the Project in accordance with the provisions of Exhibit O-3 to determine if the Project meets the requirements set forth therein for such testing.

"Dollar" or "$" means a dollar of the currency of the United States of America.

"Drawings" means (a) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Project, including the structure and foundation thereof, and (b) all technical drawings, specifications, shop drawings, vendor drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-lines, electric schematics, connection diagrams and technical information of a like nature, in each case, as to subparts (a) and (b), as prepared or modified by Company or any of its Subcontractors, all of which shall be submitted by Company or any Subcontractor, from time to time under this Agreement or at Owner's request and which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

"Due Date" has the meaning set forth in Section 5.3.2.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Engineering" shall mean all designs, drawings, documents, information and services related to engineering for the Project provided by Company or its Subcontractors.

"Environmental Attributes" means an aspect, claim, characteristic or benefit associated with the generation of a quantity of power, electricity, heat, or fuel by a renewable energy facility, other than the electric energy produced, and that is capable of being measured, verified or calculated. An Environmental Attribute may include one or more of the following identified with a particular kilowatt hour, megawatt hour, or other applicable metric of generation by a renewable energy facility designated prior to delivery of electricity, heat, or fuel: the renewable energy facility's use of a particular energy source, avoided NOx, SOx, CO2, greenhouse gas, or other emissions, avoided water use or as otherwise defined under an Applicable Program. Environmental Attributes do not include tax credits or other direct third-party subsidies for generation of electricity by or development of any specified renewable energy facility.

"Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Work, excluding (a) any Owner-provided Equipment and any items related, if any, and (b) Company's Equipment.

"Estimated Installed Capacity" means Five (5) MWe.

"Entitlements" means those certain Governmental Authorizations which are required under Applicable Law to be obtained and maintained (as applicable) or appropriate in order to allow the expeditious and efficient completion of the development of the Project, and including all Governmental Authorizations necessary to permit applicable platting, subdividing, access to utilities, earthwork, grading, infrastructure, improvements, equipment, drainage, storm water and sewer systems, roadways and other work, labor or materials required to be furnished or actions to be taken by or in connection with amending, modifying, maintaining and perpetuating all of the foregoing, and the documents, agreements and instruments relating thereto.

"Final Completion" has the meaning set forth in Section 3.6.1.

"Final Completion Certificate" means the certificate by this name as described in, and in the form set forth in, Exhibit O-8.

"Final Completion Date" means the date on which Final Completion occurs as per Section 3.6.1.

"Final Payment" has the meaning set forth in Section 5.6.

"Final Reimbursable Costs" has the meaning set forth in Section 5.5.

"Force Majeure Event" means any act, event or circumstance, or combination of acts, events or circumstances, that meets all of the following criteria:

a. arises after the Effective Date,

b. was not caused by and is beyond the reasonable control of the Party claiming the Force Majeure Event,

c. is unforeseeable,

d. is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and

e. either (i) as with respect to Owner as the impacted Party, has an impact which will actually, demonstrably and adversely affect Owner's ability to perform its obligations (other than payment obligations) in accordance with the terms of this Agreement or (ii) as with respect to Company as the impacted Party, causes a Delay or otherwise has an impact which will actually, demonstrably and adversely affect Company's ability to (A) perform Work on the Project Site so as to achieve a Key Milestone by the scheduled completion date for such Key Milestone as set forth in the Project Schedule or (B) achieve the Estimated Installed Capacity.

Provided they meet all of the criteria described above, Force Majeure Events include by way of example and not limitation: acts of God, natural disasters, wildfires, earthquakes, marine accident, civil disturbances, riots, war (defacto and dejure), military invasion, warlike acts, cyber-attack, national, regional and area-wide strikes and other national, regional and area-wide labor disputes (including collective bargaining disputes and lockouts) involving Company or Subcontractors and not directed exclusively at Company and/or such Subcontractor, epidemic and quarantine restriction, acts of the public enemy, blockades, acts of terrorism, insurrections, riots or revolutions, sabotage, vandalism, and embargoes, any Change in Applicable Law and in the event a local permitting authority takes longer than thirty (30) days to review and approve the site plan, building permit or electrical permit from the date on which a full, complete, correct, and timely application for such approval is submitted by Company or its Subcontractors to the local permitting authority provided that Company has used reasonable efforts to follow up with such authority to obtain timely review and approval.

Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the Work by a Subcontractor on the Project Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or Subcontractor; (ii) any labor or manpower shortages unless there is an independent, identifiable Force Majeure Event causing such condition; (iii) unavailability, late delivery, failure, breakage or malfunction of Equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of Equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation routes by Government Authorities; (vii) actions of a Government Authority in respect of or in relation to or resulting from Company's or Subcontractors' compliance or non-compliance with Applicable Laws; (viii) any failure by Company to obtain and/or maintain any Applicable Permit it is required to obtain and/or maintain hereunder, unless such failure is caused by a Force Majeure Event preventing the Government Authority from issuing such Applicable Permit; (ix) weather and related events, and (x) any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or other Personnel of Company. Company shall not claim as a Force Majeure Event any event or circumstance during which Company continues to perform for another customer or under another contract the same or substantially similar obligations that are claimed to be impacted by such event or circumstance being claimed as a Force Majeure Event this Agreement.

"Force Majeure Notice" has the meaning set forth in Section 9.1.1.

"Functional Specifications" means those specifications set forth on Exhibit D-2.

"General Real Property Rights" means all rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, performance of the Work, or operation of the Project, including rights in or to any Owner Permits, easements, licenses, private rights-of-way, and utility and railroad crossing rights.

"Geotechnical Constructability Survey" means the geotechnical constructability survey prepared by Company pursuant to a Pre-Effective Date LNTP and incorporated into this Agreement as Exhibit E-1.

"Government Authority" means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof, including the DOE.

"Governmental Authorizations" means any permit, approval, license, zoning and other resolution, certificate of occupancy, authorization, plan, certification, exemption, directive, consent order, consent decree or similar authorizations of or from any Government Authority.

"Guaranteed Basis of Design Date" means May 31, 2022.

"Guaranteed Completion Dates" means, collectively, the Guaranteed Basis of Design Date, Guaranteed Mechanical Completion Date, the Guaranteed Substantial Completion Date, and the Guaranteed Final Completion Date.

"Guaranteed Final Completion Date" has the meaning set forth in Exhibit C-1, as such date may be changed or extended by one or more Change Orders pursuant to Article X hereof.

"Guaranteed Mechanical Completion Date" has the meaning set forth in Exhibit C-1, as such date may be changed or extended by one or more Change Orders pursuant to Article X hereof

"Guaranteed Substantial Completion Date" has the meaning set forth in Exhibit C-1, as such date may be changed or extended by one or more Change Orders pursuant to Article X hereof.

"Hazardous Material" means (a) any petroleum, petroleum constituents or petroleum products, flammable, ignitable, corrosive or explosive substances or materials, biohazardous materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls ("PCBs"), (b) any chemicals or other materials or substances which are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants" or words of similar import under any Applicable Law, and (c) any other chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

"Heliogen Background Intellectual Property Rights" has the meaning set forth in the Development Agreement.

"Indemnified Person" has the meaning set forth in Section 12.2.1.

"Indemnifying Party" has the meaning set forth in Section 12.2.1.

"Intellectual Property Rights" has the meaning set forth in Section 2.21.

"Job Books" means all purchasing and other information relating to the Work, including: (a) a drawing index; (b) a reference index; (c) copies of Company's and Subcontractors' Permits; (d) copies of all contracts and purchase orders for Subcontractors' equipment (non-priced); (e) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (f) one copy of the As-Built

Drawings and documentation; (g) training manuals; (h) a cable and raceway schedule; (i) the Operating Manuals; (j) electrical one-line diagrams for the Project; (k) field testing of power and fiber optic cable; (l) a compilation of final Project safety records; and (m) a final list and summary of the Work performed by all Subcontractors.

"Key Milestone Date" means the date, as applicable, on which a Key Milestone is achieved.

"Key Milestones" means those Key Milestones set forth on Exhibit C-1.1.

"Labor" means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers (and including those provided by Subcontractors).

"Lien" means any lien (whether statutory or otherwise and including mechanics' or suppliers' liens and whether or not such lien is valid or enforceable), security interest, mortgage, hypothecation, covenant, condition, restriction, easement, right of way, license, lease, sublease, encumbrance or other restriction on the Work, Project Site, Project, Equipment, Owner, Owner-provided Equipment, any fixtures or personal property included in the Project, or any other part thereof or interest in any of the foregoing.

"Lien Waiver and Release" means waivers to Lien rights that are either conditional or unconditional as specified in this Agreement. Lien Waiver and Releases will be provided in the forms set forth in Exhibit M-1, Exhibit M-2, Exhibit M-3, and Exhibit M-4, as required and be in such form as required by Applicable Laws or as mutually agreed by the Parties.

"Limited Notice to Proceed" or "LNTP" means (a) a written notice issued by Owner to Company substantially in the form of the Pre-Effective Date LNTP, directing Company to commence the Work set forth therein in accordance with the terms of this Agreement in advance of the Notice to Proceed, or (b) any Pre-Effective Date LNTP.

"Losses" has the meaning set forth in Section 12.1.1.

"Major Subcontract" means any agreement or purchase order executed and/or issued by Company or any Subcontractor with a Subcontractor for performance of any part of the Work that has an aggregate value in excess of Five Hundred Thousand Dollars ($500,000).

"Major Subcontractor" means any Subcontractor listed on Exhibit H with whom Company or a Subcontractor will enter or has entered into a Major Subcontract.

"Manufacturer Warranties" means all warranties and guarantees associated with the Equipment.

"Mechanical Completion" has the meaning set forth in Section 3.2.1.

"Mechanical Completion Certificate" means the certificate by this name as described in, and in the form set forth in, Exhibit O-2.

"Mechanical Completion Date" has the meaning set forth in Section 3.2.2.

"Milestone Payment Schedule" means the schedule attached hereto as Exhibit C-2.

"Monthly Progress Payment" means the payment to be made to Company on months and as indicated on the Milestone Payment Schedule attached hereto as Exhibit C-2.

"Notice to Proceed" means the written notice issued by Owner to Company substantially in form as shown in Exhibit P, directing Company to commence the Work in accordance with the terms of this Agreement.

"Notice to Proceed Deadline" means March 31, 2022. In the event Owner issues a Limited Notice to Proceed prior to the then applicable Notice to Proceed Deadline and such Limited Notice to Proceed stipulates that Company is released to perform all or any portion of the Work through a stated period of time, the Notice to Proceed Deadline will be extended to the last day of such period of time.

"Operating Manuals" means the complete system instructions and procedures for the operation and maintenance of the Work, which shall comply with the requirements of the Scope of Work, including Company's manufacturers', vendors', suppliers' and Subcontractors' recommended list of spare parts, all safety information, equipment and maintenance manuals and any precautionary measures therefor.

"Other Owner Contractors" means any Persons, other than Company or a Subcontractor or their Personnel, with whom Owner contracts or subcontracts to perform work in connection with the Project. Other Owner Contractors may also include Owner in the event Owner elects to perform any work in connection with the Project. The Parties acknowledge that as of the Effective Date there are no Other Owner Contractors contracted to perform any work with respect to the Project.

"Owner" has the meaning set forth in the preamble hereto.

"Owner-Caused Delay" means a delay in Company's or a Subcontractor's performance of the Work or an increase in Company's or a Subcontractor's costs that has been demonstrably to the extent caused by the failure of Owner or Other Owner Contractors, to perform any obligation of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have Defective or nonconforming Work corrected or re-executed).

"Owner Event of Default" has the meaning set forth in Section 13.2.

"Owner Indemnified Party" has the meaning set forth in Section 12.1.1.

"Owner Permits" means all Applicable Permits identified as Owner Permits as set forth in Exhibit G.

"Owner Real Property Rights" means all rights in or to real property (such as leasehold or other rights to use or access the Project Site), options, leases, or agreements maintained by

Owner in connection with construction of the Project on the Project Site, performance of the Work, or operation of the Project.

"Owner's Engineer" means the Person so designated by Owner in writing to Company.

"Owner's Project Manager" means the individual appointed by Owner to act on its behalf in connection with this Agreement.

"Owner's Share" means the (i) Final Reimbursable Costs *multiplied by* (ii) the Contract Price *divided by* (iii) (a) the Contract Price *plus* (b) $39,000,000.

"Owner Taxes" has the meaning set forth in Section 5.1.3.

"Owner Termination for Cause" has the meaning set forth in Section 13.1.2.

"Owner Termination Without Cause" has the meaning set forth in Section 13.4.

"Party" or "Parties" means, respectively, a party or both parties to this Agreement.

"Permit" means any waiver, exemption, variance, certificate, franchise, permit, approval, exemption, authorization, clearance, license, consent, or similar order of or from, or filing or registration with, or notice to, any Government Authority, including environmental, health and safety permits, site plan approval, building permits, certificates of occupancy, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Permitted Liens" means (a) statutory Liens for Taxes not yet delinquent, (b) zoning, building codes, and other land use laws regulating the use or occupancy of real property or the activities conducted thereon that are imposed by any Government Authority having jurisdiction over such property, but only to the extent not violated by the construction, operation or maintenance of the Project on such property, and (c) recorded encumbrances disclosed in the title commitment and such other matters as are disclosed in the ALTA survey provided as part of the Project Site Diligence, but in each case that would not, individually or in the aggregate, impair the use or occupancy of the Project Site for the construction, operation and maintenance of the Project.

"Person" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Government Authority or other entity of whatever nature.

"Personnel" means, with respect to a Party or entity, such Party's or entity's employees, agents, personnel, representatives, invitees, subcontractors (including, as applicable, the Subcontractors), vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents', personnel's, representatives', invitees', subcontractors', vendors' or third party independent contractors' respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

"Predetermined Change Items" has the meaning set forth in Section 10.2.1.

"Pre-Effective Date LNTP" means the document attached hereto as Exhibit E-2.

"Pre-Existing Hazardous Material" means any Hazardous Material that (a) existed on or in the Project Site prior to the Effective Date and/or (b) was not brought to the Project Site by Company or its Personnel after the Effective Date.

"Progress Report" means a monthly, written report that includes a description of the progress and status of the Work compared to the Project Schedule, the Subcontractors' activities, procurement, and construction progress, any order of long lead items made by Company or a Subcontractor, a summary of any Change Orders executed by the Parties as of the date of such report, a summary of any events that may affect the Project Schedule (including any Force Majeure Events, Owner-Caused Delays, Liens, or any asserted violations of Applicable Laws), and such other matters related to the Work or the Project as may be reasonably requested by Owner.

"Project" means the solar-powered, electric generation project that is the subject of this Agreement with an expected capacity of approximately the Estimated Installed Capacity, and including all related infrastructure, all of which are to be located on the Project Site, and all other structures, facilities, appliances, lines, conductors, instruments, Equipment, apparatus, components, roads and other property comprising or relating thereto.

"Project Documents" means, collectively, (a) the Geotechnical Constructability Survey, (b) each Pre-Effective Date LNTP, and (c) the Critical Issues Analysis..

"Project Schedule" means the schedule of dates and milestones (including Key Milestones) for timely completion of the Work as set forth in Exhibit C-1.1 and Exhibit C-1.2, with specific start and end dates for each activity comprising (or relating to) the Work.

"Project Site" means […***…], as may be revised pursuant to Section 2.12.1.

"Project Site Approval" has the meaning set forth in Section 2.12.1(a).

"Project Site Approval Date" means the date on which Project Site Approval occurs.

"Project Site Diligence Materials" means Phase I environmental reports, Phase II environmental reports, species and habitat reports, cultural resources reports, airspace analysis reports, water resources studies, a current title commitment issued by the Title Company, and a current ALTA Survey, in each case with respect to the Project Site, and any other materials requested by Owner to evaluate the suitability of the Project Site for the development of the Project.

"Prudent Solar Industry Practices" means, in connection with the design, engineering, procurement, construction, and commissioning of solar power generation systems of a type and size and having geographical and climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members in the state of California as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment

by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, dependability (to the extent applicable to the Work), and safety. Prudent Solar Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts generally accepted in the industry.

"Punch List" has the meaning set forth in Section 3.5.1.

"Quality Assurance Procedures" means the quality assurance and quality control procedures as set forth in Exhibit L, which shall be finalized in accordance with the same.

"Real Property Rights" means, collectively, the Owner Real Property Rights and the General Real Property Rights.

"REC" means renewable energy credit or renewable energy certificate.

"Reimbursable Costs" means actual, reasonable, documented, out-of-pocket third party costs and expenses that have been paid and were directly incurred by Company for the performance of the Work.

"Release" means, except as may be expressly authorized by Applicable Law, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials or Pre-Existing Hazardous Materials into the environment, including the soils or other surface feature, subsoils or any subsurface feature or strata, surface water, groundwater, or ambient air (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Materials or Pre-Existing Hazardous Materials).

"Renewable Energy Incentives" means: (a) federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Project (including credits under Sections 38, 45, and 45K of the Internal Revenue Code of 1986, as amended); (b) any investment tax credits and any other tax credits associated with the Project (including credits under Sections 38 and 48 of the Internal Revenue Code of 1986, as amended); (c) any state, federal or private cash payments or grants relating in any way to the Project or the output thereof; (d) state, federal or private grants or other benefits related to the Project or the output thereof, and (e) any other form of incentive that is not an Environmental Attribute that is available with respect to the Project.

"Request for Payment" has the meaning set forth in Section 5.3.1.

"Safety Plans" has the meaning set forth in Section 2.16.1.

"Scope of Work" means the services and work to be provided, or caused to be provided, by or through Company under this Agreement, as more particularly described in Exhibit A-1, and the other obligations of Company under this Agreement, as the same may be amended from time to time in accordance with the terms hereof.

"Services Taxes" has the meaning set forth in Section 5.1.3.

"Specifications" has the meaning set forth in Section 2.3.

"Subcontract" means an agreement between Company and any Subcontractor.

"Subcontractor" means any subcontractor, vendor or supplier of Equipment, as shown in Exhibit H, or services to Company or any subcontractor of any Person engaged or employed by Company or any Subcontractor (or sub-subcontractor) in connection with the performance of the Work. For the avoidance of doubt, Subcontractors shall include Persons at any tier with whom any Subcontractor has further subcontracted any part of the Work, whether or not approved by Owner, and the successors and assigns of such Person.

"Substantial Completion" has the meaning set forth in Section 3.4.1.

"Substantial Completion Certificate" means the certificate by this name as described in, and in the form set forth in, Exhibit O-6.

"Substantial Completion Date" means the date on which the Project achieves Substantial Completion in accordance with Section 3.4.2.

"Surviving Subcontractor Warranties" has the meaning set forth in Section 2.10.4.

"SWD" has the meaning set forth in Section 13.8.

"Taxes" means any taxes, assessments, and other governmental charges in the nature of a tax imposed by any Government Authority, including income, profits, gross receipts, employment, stamp, alternative or add-on minimum, ad valorem, property, transfer, value added, sales, use, customs, duties, capital stock, franchise, excise, withholding, social security (or similar), payroll, severance, production or other tax, including any interest, penalty or addition thereto.

"Technical Specifications" means the specifications set forth in Exhibit D-1.

"Termination Payment" has the meaning set forth in Section 13.3.1.

"Third Party Controversy" has the meaning set forth in Section 15.3.

"Title Company" means Fidelity National Title Company.

"Title Policy" means an ALTA owner's title insurance policy issued by the Title Company in form and substance acceptable to Owner insuring the Owner's fee title interest in and to the Project Site, subject to no Liens except for Permitted Liens and, prior to Final Completion, the DOE Lien, with an amount of insurance of at least the total amount of all costs and expenses incurred or to be incurred for the completion of the Project through Final Completion, including all third party and internal costs and expenses and all costs and expenses related to the acquisition of the Project Site, including such endorsements as required by Owner.

"Unforeseen Site Condition" has the meaning set forth in Section 2.12.4.

"Warranty" has the meaning set forth in Section 7.1.1(a).

"Warranty Period" has the meaning set forth in Section 7.1.2.

"Warranty Service" has the meaning set forth in Section 7.1.3.

"Work" means all necessary work and services, including all obligations described in Article II and the Scope of Work, required in connection with (a) the design, engineering, procurement, construction, assembly, installation, start-up, testing, and commissioning support and completion of the Project; (b) the procurement, delivery, handling, storage, installation and incorporation of the Equipment into the Project and the handling, storage, installation and incorporation of Owner-provided Equipment, if any, into the Project; (c) the provision, management and supervision of all Personnel, transportation, administration and other services as required in connection with any of the foregoing; (d) the performance of, and incorporation into the Project of, the Engineering; (e) the work and services set forth in any executed LNTP; (f) the procurement, inspection, handling, storage, and furnishing of all hardware and software, electrical wiring, conduit and other electrical supplies, combiner boxes, combiner fuses, grounding equipment, materials, equipment, machinery, tools, temporary structures, and temporary utilities as required in connection with the foregoing; and (g) any other product or result of the foregoing which is described in Exhibit A-1.

"Working Condition" has the meaning set forth in Section 2.7.1(b).

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) references to "Articles," "Sections," or "Exhibits" (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person's successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word "including" or "include" in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement; (f) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders; and (g) references to any amount of money shall mean a reference to the amount in United States Dollars; The Parties collectively have prepared this Agreement, with advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.3 Order of Precedence. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

(a) Amendments, addenda or other modifications to this Agreement (including Change Orders) duly signed by both Parties and issued after the signing of this

Agreement that explicitly state the intent of the Parties to amend, addend, or modify this Agreement, with those of a later date having precedence over those of an earlier date;

(b) This Agreement (excluding Exhibits hereto);

(c) Exhibit A-1;

(d) The other Exhibits (Exhibit A-2 through Exhibit Q);

(e) Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Notwithstanding the foregoing provisions of this Section 1.3, if a conflict exists within a part of this Agreement as listed in a lettered subclause above, or between or among this Agreement and Applicable Laws, such conflict shall be reasonably reconciled with this Agreement as a whole. Where a conflict exists among codes and standards applicable to the Work or Company's performance of the Work, such conflict shall be reasonably reconciled with this Agreement as a whole.

ARTICLE II

COMPANY RESPONSIBILITIES

2.1 Work. Owner hereby retains Company, and Company hereby agrees to perform or cause to be performed the Work in accordance with the Specifications on a turnkey basis for the payment of the Contract Price, as adjusted pursuant to the terms hereunder. Notwithstanding anything contained in this Agreement to the contrary (including the Exhibits hereto), where this Agreement describes the Work or Equipment in general terms, but not in complete detail (and except as otherwise stated in Exhibit A-2 as being the responsibility of Owner), it is understood and agreed that the Work and Equipment include any reasonably foreseeable incidental work and materials that are required and necessary to complete the Project in accordance with this Agreement. As part of the Work, at no additional cost or expense to Owner, Company shall pay all transportation charges incurred by Company in connection with its performance of this Agreement including procuring, transporting and delivering the Equipment and any other items provided by Company pursuant to this Agreement and all charges for shipping, air travel and in-land transportation for the same. Subject to the terms of this Agreement, Company acknowledges that this Agreement constitutes a maximum price obligation to perform the Work. Company hereby represents and commits that it can complete the Work for the Contract Price in accordance with the Project Schedule. No later than 15 Days following delivery of the "Full FEED Package" (as set forth in the Design Delivery Schedule), Company shall deliver to Owner a revised Scope of Work sufficient for the completion of the Work and the Project and fully describing the categories of Work included in the Scope of Work attached hereto as of the Effective Date and any other Work determined to be required during the design process. Owner will have 15 days following receipt of such revised Scope of Work to either approve such draft or provide comments on the draft Scope of Work submitted by Company, and Company will incorporate such comments and provide a revised draft within 15 days of receipt thereof. Such

further revised draft of the Scope of Work will be subject to Owner's review and comment as set forth above in this Section 2.1. Upon approval of the revised Scope of Work pursuant to this Section 2.1, this Agreement will be amended to replace the Scope of Work attached hereto as Exhibit A-1 with such revised Scope of Work. For the avoidance of doubt, no such revision to the Scope of Work will entitle Company to any Change Order.

2.2 Design and Engineering Standards. The Work performed and Equipment provided by Company hereunder shall be designed and engineered in accordance with the Specifications for use as a solar-powered electrical generation facility for at least twenty-five (25) years (or thirty-five (35) years for aspects of the Work related to civil work, grading, installation of the piles and foundations) under the climatic and operating conditions that are normal for the location of the Project Site, subject to normal wear and tear and maintenance and operation requirements in accordance with the Operating Manuals; provided, that any direct or indirect reference to design life of the Work does not extend the limitation periods that would otherwise apply in respect of any warranty or claims by the Owner against the Company under this Agreement. All engineering work of Company requiring certification shall be certified, and all Drawings and specifications for the Work requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in the appropriate jurisdictions.

2.3 Specifications. Company shall cause the Work to be performed (a) in compliance with Prudent Solar Industry Practices, the Quality Assurance Procedures, the Technical Specifications, and the Functional Specifications; (b) in compliance with the terms of this Agreement (including all Exhibits attached hereto); (c) in compliance with all Applicable Laws, including the Federal Foreign Corrupt Practices Act (15 U.S.C.S. §§ 78a and 78m et seq.), and Applicable Permits; (d) in a safe, expeditious, good, diligent and workmanlike manner, (e) in compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970, as amended from time to time; (f) in compliance with the 2014 NEC code; (g) in compliance with the applicable terms of the Project Documents, to the extent applicable to the Work, and (h) in compliance with the written specifications of the manufacturers and any other specifications known by Company or its relevant Subcontractors as they relate to all Equipment and, to the extent provided, Owner-provided Equipment and all Manufacturer Warranties (items (a) through (h) collectively, the "Specifications"). In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits comprising the Specifications be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws, and Permits to such provision.

2.4 Pre-Mobilization Work

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2.4.1 Design.

(a) Company shall design the Work such that it complies with the Specifications and duly accounting for site conditions (including terrain, soil condition, and underground survey) under enclosed Exhibits or otherwise known by or disclosed to Company. Company shall prepare the Drawings setting forth in detail the requirements for the performance of the Work. Company shall deliver to Owner (i) the Basis of Design and Detailed Engineering by the Guaranteed Basis of Design Date consistent with the

Functional Specifications, as determined by Owner in its reasonable discretion, and (ii) each of the Drawings and specifications for the Work on the date specified for the delivery of such Drawings and specifications on the Design Delivery Schedule for Owner's review. Owner acknowledges that it has received a Basis of Design at basic front-end engineering and design, and that an updated Basis of Design will be provided by Company at full front-end engineering and design ("FEED"). Owner will have 15 days following receipt of such updated Basis of Design to either approve such draft or provide comments on the draft Basis of Design submitted by Company, and Company will incorporate such comments and provide a revised draft within 15 days of receipt thereof. Such further revised draft of the Basis of Design will be subject to Owner's review and comment as set forth above in this Section 2.4.1(a). For the avoidance of doubt, no such revision to the Basis of Design will entitle Company to any Change Order; *provided however* this provision shall not restrict Company's rights under Section 3.1.2.

(b) As the Drawings and specifications for the Work are issued to Owner, Company shall identify them to Owner as Drawings. Company shall, within ten (10) Days after Owner's notification of any comments or questions on any Drawing so submitted, amend such Drawing or otherwise respond to Owner's comments or questions and, if necessary, resubmit such Drawing for Owner review in accordance with this Section 2.4.1. To the extent that the Work includes the completion of any additional design work (pursuant to a Change Order or otherwise), Company shall prepare all relevant Drawings and specifications for Owner's and Owner's Engineer's review and comment. Company shall update Drawings and specifications to incorporate Owner's and Owner's Engineer's comments. To the extent such updates are required to conform the Drawings to the Specifications or to correct any errors the Drawings, the changes performed by Company pursuant to the immediately preceding sentence shall be at no extra cost to Owner. Subject to the provisions in Article X, modifications to such Drawings resulting from Owner's review or comments that change the Scope of Work may result in a change to the Contract Price to the extent required by Article X. Notwithstanding anything contained herein to the contrary, Owner's review, provision of comments (or lack of provision of comments) or acceptance of the Drawings, or any portion thereof, shall not in any way relieve Company of any of its obligations, liabilities or warranties set forth herein, including its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Drawings, and Owner assumes no responsibility for such obligations, liabilities or warranties as a result of its provision or lack of provision of comments or in connection with any acceptance. If this Agreement is terminated prior to the Substantial Completion Date, Company shall furnish Owner with any and all final Drawings which have been prepared, and the most up-to-date versions of Drawings which are not yet final.

2.4.2 Ownership of Drawings. Subject to Section 2.21, upon Final Payment in accordance with Article V, all final Drawings (including As-Built Drawings), specifications and other documents prepared by or for Company in respect of the Work and all Drawings, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner that come into Company's possession during its performance hereunder shall be the property of Owner, and such Owner documents and other materials shall be provided or returned to Owner upon the earlier of the Substantial Completion Date or termination of this Agreement. Review (or lack thereof)

by Owner or its designees of any Project documents provided by Company, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Company of any of its duties, obligations or liabilities under the terms of this Agreement.

2.4.3 As-Built Drawings. Company shall maintain an up-to-date set of Drawings and shall provide all written comments, field changes, and redlined drawings to Owner, and Company shall prepare and provide Owner a complete set of As-Built Drawings in hard copies or such other format as reasonably required by Owner. Company shall provide all Company Deliverables, including a complete set of As-Built Drawings in hard copies or such other format as reasonably required by Owner by the earlier of Final Completion or thirty (30) Days after Substantial Completion. Owner or Owner's Engineer may review the As-Built Drawings and provide comments related to as-built conditions. Company shall modify the As-Built Drawings to incorporate any comments provided by Owner or Owner's Engineer.

2.5 Equipment. Company shall procure and supply, at its own expense, Equipment required to complete the Work and as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Company shall inspect or cause to be inspected all such Equipment and shall reject those items determined not to be in compliance with the requirements of this Agreement or the Specifications. Company shall be responsible, at its sole expense, for the furnishing and installation of all utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment shall be either (a) of the grade specified for such Equipment in the Scope of Work or the Technical Specifications, or (b) if no grade is specified for such Equipment in the Scope of Work or the Technical Specifications, then of suitable grade under Prudent Solar Industry Practices. Company shall supply all consumable parts and supplies required for the Work including cable ties, cable wraps, splices, wire nuts, lubricants, greases and other consumable materials (collectively, the "Consumable Parts").

2.6 Additional Equipment and Spare Parts.

2.6.1 Owner may at any time prior to Substantial Completion, notify Company in writing that Owner wishes to acquire certain spare parts or other items reasonably required for the operation and maintenance of the Project that are in addition to and not included under the definition of the "Equipment" ("Additional Equipment") from Company. Company shall thereafter deliver, or cause to be delivered, such Additional Equipment (to be delivered "Delivered Duty Paid" (DDP Incoterms 2010)) to the Project Site in accordance with Owner's instructions. Title and risk of loss to such Additional Equipment will transfer to Owner upon such delivery. After delivery of any Additional Equipment is completed, Company will invoice Owner for the price and other costs associated with such Additional Equipment delivered to Owner pursuant to this Section 2.6. Owner shall bear the costs associated with any such items of the Additional Equipment and shall pay Company the undisputed portions of any such costs within thirty (30) Days after Owner's receipt of the applicable invoice.

2.6.2 Should a component of the Equipment fail during commissioning, start-up or testing, Company may utilize a spare part of that component from Owner's inventory,

if any exists, in order to return the Equipment to operating condition. Company shall, at its cost, promptly replace any spare parts so utilized, that constitute Equipment.

2.6.3 Notwithstanding anything to the contrary herein, at no time shall Owner have any obligation to purchase spare parts or other items for, from or through Company.

2.7 Owner-provided Equipment.

2.7.1 Delivery; Unloading.

(a) Owner shall give to Company reasonable notice of anticipated delivery dates of Owner-provided Equipment and shall coordinate with Company when delivery will be made for the purpose of limiting the impact on Company's performance of the Work and the need for storage of Owner-provided Equipment by Company to that necessary for the efficient performance of the Work. Company is responsible for unloading, inspecting (to the extent required by this Section 2.7), documenting, inventorying and safely and securely storing the Owner-provided Equipment in accordance with any specifications for such Owner-provided Equipment provided to Company and in accordance with Prudent Solar Industry Practices and the Specifications (collectively, the "Unloading Requirements"). Company shall not leave any Owner-provided Equipment exposed, unsecured, or unguarded without the written consent of Owner or Owner's Project Manager.

(b) Within seven (7) Business Days of Company's receipt of any Owner-provided Equipment at the Project Site, Company shall (i) perform an inspection of such Owner-provided Equipment, and (ii) Company shall notify Owner and Owner's Project Manager of the receipt of each Owner-provided Equipment ("Delivery Notice"), stating whether or not such delivered Owner-provided Equipment appears, based on such inspection, to (a) be in a good and new condition, without defects or damage including the packaging, and (b) match the make, model, type and amount as set forth in the Owner-provided Equipment Specifications (collectively, "Working Condition"). All visible damage must be documented by photographs and all visible damage to packaging must be documented by delivery driver signature or, as applicable, notation in the Delivery Notice that the delivery driver refused to sign. Owner shall be responsible for all costs and expenses incurred with respect to Company's efforts to acquire the required delivery driver signature. The foregoing notwithstanding, Company shall not be obligated to discover any hidden or latent defects in Owner-provided Equipment and such inspection is not intended to assure electrical, mechanical or quality specifications of such Owner-provided Equipment.

(c) If Company fails to timely provide a Delivery Notice as required herein or breaches the Unloading Requirements, Company shall bear all responsibility for all reasonable and direct costs and Delays associated with (i) Owner-provided Equipment received by Company not in Working Condition that was not the subject of a Delivery Notice and which a diligent inspection of such Owner-provided Equipment would have revealed and (ii) damage to Owner-provided Equipment caused by Company's breach of the Unloading Requirements, and Owner shall have the right, to the extent not remedied by Company, to either, (a) invoice Company for any such costs, with undisputed amounts

payable by Company within thirty (30) Days of Company's receipt of such invoice, or (b) offset any such costs against payment of the Contract Price.

(d)

(i) If a Delivery Notice indicates that any Owner-provided Equipment has been received by Company in Working Condition but at any time thereafter until Substantial Completion, Owner determines that such Owner-provided Equipment is not in Working Condition that a diligent inspection of such Owner-provided Equipment would have revealed, then, Company shall bear all associated reasonable and direct costs paid by Owner and responsibility for associated Delays, and Owner shall have the right to either, at its sole discretion and election, (a) invoice Company for any such costs, with undisputed amounts payable by Company within thirty (30) Days of Company's receipt of such invoice, or (b) offset any such undisputed reasonable and direct costs against payment of the Contract Price.

(ii) Subject to Section 2.7.1(d)(i), Company shall not be responsible for any other costs or Delays associated with Owner-provided Equipment that is defective, damaged or otherwise fails to conform with the Owner-provided Equipment Specifications after receipt of such Owner-provided Equipment to the extent that such failure is due to (i) a design or workmanship issue caused by the manufacturer of such Owner-provided Equipment; (ii) damage caused by Owner or its Personnel; or (iii) errors, defects, inconsistencies or inaccuracies in the Work completed pursuant to any engineering performed or provided by the Owner or Other Owner Contractors solely to the extent such engineering is not Company's responsibility as part of the Work hereunder or in the ordering of such Owner-provided Equipment by Owner.

(iii) Except as otherwise provided for herein, in the event that there is a dispute as to whether the Owner-provided Equipment is defective, damaged or otherwise fails to conform with the Owner-provided Equipment Specifications or whether the cause of the failure is due to a manufacturer design or workmanship issues, then such dispute shall be resolved pursuant to Article XV.

(e) If Company notifies Owner and Owner's Project Manager within such seven (7) Business Days period that any Owner-provided Equipment was received by Company not in Working Condition at the time it was made available to Company and Owner certifies the same by countersignature of such notice, then any Delay or increased costs in Company's performance of the Work as a demonstrable result of such failure shall be an Owner-Caused Delay and (i) Company shall comply with Owner's instructions regarding the repackaging and return of such Owner-provided Equipment; and (ii) Owner shall redeliver such Owner-provided Equipment in Working Condition.

2.7.2 Uncrating Inspection.

(a) Within five (5) Business Days following uncrating of any Owner- provided Equipment at the Project Site for installation, Company shall (i) perform a visual inspection of the Owner-provided Equipment uncrated, and (ii) notify Owner and Owner's Project Manager of the uncrating of the Owner-provided Equipment, (a) stating the amount uncrated, whether such Owner-provided Equipment was subject to a Delivery Notice and whether or not such Owner-provided Equipment has (I) any visible defects or damages, (II) any deviation in the count on the bill of lading and Company's count, and (III) any deviation in the make, model, type and amount as set forth in the Owner-provided Equipment Specifications (subparts (I) - (III) collectively, "Installation Ready") and (b) shall include photographs of all visible defects and damage. The foregoing notwithstanding, Company shall not be obligated to discover any hidden or latent defects in Owner-provided Equipment and such inspection is not intended to assure electrical, mechanical or quality specifications of such Owner-provided Equipment.

(b) If Company notifies Owner and Owner's Project Manager within such period specified in Section 2.7.2(a) that any Owner-provided Equipment is not Installation Ready and Owner certifies the same by countersignature of such notice, then, to the extent such failure to be Installation Ready was not caused by Company or its Personnel, the same shall be an Owner-Caused Delay and (i) Company shall comply with Owner's instructions regarding the repackaging and return of such Owner-provided Equipment; and (ii) Owner shall redeliver such Owner-provided Equipment.

(c) If Company fails to notify Owner that any Owner-provided Equipment is not Installation Ready within the time required herein and which a diligent inspection of such Owner-provided Equipment would have revealed, then, to the extent such failure to be Installation Ready was caused by Company or its Personnel, Company shall bear all associated reasonable and direct costs paid by Owner and responsibility for associated Delays, and Owner shall have the right to either, at its sole discretion and election, (a) invoice Company for any such costs, with undisputed amounts payable by Company within thirty (30) Days of Company's receipt of such invoice, or (b) offset any such undisputed reasonable and direct costs against payment of the Contract Price pursuant to Section 5.8; provided, however, that Company shall not be responsible for any costs or Delays associated with Owner-provided Equipment that is defective, damaged or otherwise fails to conform with the Owner-provided Equipment Specifications after receipt of such Owner-provided Equipment to the extent that such failure is due to: (i) a design or workmanship issue caused by the manufacturer of such Owner-provided Equipment, (ii) damage by Owner or its Personnel or (iii) errors, defects, inconsistencies or inaccuracies in the Work completed pursuant to any engineering performed or provided by Owner or Other Owner Contractors solely to the extent such engineering is not Company's responsibility to complete as part of the Work hereunder or in the ordering of such Owner-provided Equipment by Owner. Except as otherwise provided for herein,

in the event that there is a dispute as to whether the Owner- provided Equipment is defective, damaged or otherwise fails to conform with the Owner-provided Equipment Specifications or whether the cause of the failure is due to a manufacturer design or workmanship issues, then such dispute shall be resolved pursuant to Article XV.

2.7.3 Installation and Integration of Owner-provided Equipment. Company shall provide all services, management, Personnel, Company's Equipment, equipment and materials necessary to install the Owner-provided Equipment and the Equipment as provided in Exhibit A-1, all in accordance with the Project Schedule.

2.7.4 All Owner-provided Equipment shall be new and unused and either (a) of the grade specified for such Equipment in the Scope of Work or the Technical Specifications, or (b) if no grade is specified for such Equipment in the Scope of Work or the Technical Specifications, then of suitable grade under Prudent Solar Industry Practices.

2.8 Storage. Subject to Section 6.3 regarding risk of loss, at all times prior to the date of Substantial Completion, Company shall provide appropriate storage, including storage for the Equipment, Consumable Parts, and all other materials and supplies utilized in connection with the Work and all other personal property owned or leased by Company or any Subcontractor located at the Project Site.

2.9 Inspections. Company shall conduct and supervise all building and structural inspections as required by this Agreement, any Permit or Applicable Law and promptly provide to Owner and Owner's Engineer all Permits (including any certificate of inspection) received in conjunction therewith. Company shall cooperate with and assist with any Owner requested inspections by the Owner's Engineer or other Owner representative.

2.10 Subcontractors

2.10.1 Owner acknowledges that Company intends to have portions of the Work completed by Subcontractors qualified to perform such portions of the Work pursuant to written Subcontracts. Exhibit H sets forth a list of approved Subcontractors. Owner agrees to Company's use and engagement of Subcontractors; provided Company may not enter into any Major Subcontract with any Person not listed in Exhibit H or approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed); provided further that Company will in any event remain liable for the performance of all of Subcontractors' obligations hereunder. Upon Owner's request, Company will provide Owner with a list of its Subcontracts and Subcontractors and redacted copies of any Subcontract requested by Owner and will use commercially reasonable efforts to address any comments or concerns from Owner that would not delay the Project Schedule or otherwise unreasonably interfere with the Work. Except as otherwise expressly provided in this Agreement, Company shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by them. Company will ensure that all Personnel, labor, supervision, and Subcontractors of any tier are properly licensed and qualified to perform the work that they are engaged to perform. Company will ensure that Subcontracts provide that

Subcontractors may not enter into Major Subcontracts with any Person not (i) listed in Exhibit H hereto or (ii) approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed).

2.10.2 Company shall require that all Work performed and all Equipment provided by Subcontractors be received, inspected and otherwise furnished in accordance with this Agreement and (as between Owner and Company) Company shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors and the Persons employed by them; provided, however, that Owner shall have the right (but not the obligation) to pay any Subcontractor directly any amounts properly due and owing by Company to such Subcontractor as required under its Subcontract, but only if (a) Owner has provided prior written notice to Company to make payment of any amounts properly and owing to a Subcontractor not under a good faith dispute by Company within seven (7) Days thereof; (b) Company has been paid amounts due and owing under this Agreement, other than any amounts that Owner has paid or intends to pay directly to any Subcontractor pursuant to this Section 2.10.2, and Company has failed to pay such Subcontractor when properly due and owing and (c) such amounts are not subject to a valid dispute between Company and such Subcontractor that Company has notified Owner of, and deduct and set-off against any monies due to Company under this Agreement any amount so paid by Owner to such Subcontractor or seek repayment of such amounts from Company.

2.10.3 All Subcontracts shall be consistent with the terms and provisions of this Agreement. At a minimum, all Subcontracts shall (a) require Subcontractors to comply with the Specifications, (b) be subject to the labor obligations hereunder as well as the safety and security provisions of this Agreement, (c) provide guarantees and warranties with respect to its portion of the Work and the Equipment consistent with the warranties provided under, or required by, this Agreement and provide that such guarantees and warranties may be assigned by Company to Owner without consent of Subcontractor, and (d) include such other provisions of this Agreement as required hereby, including insurance requirements under Article XI and Exhibit N. All Subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require that any Subcontractors that enter into subcontracts with sub-subcontractors shall include the requirements of this Section 2.10.3 as if such sub-subcontract was a Subcontract hereunder. No contractual relationship shall exist between Owner and any Subcontractor with respect to the Work. Each Subcontract shall include a provision that permits the assignment of such Subcontract to Owner without the consent of such Subcontractor, including without limitation collateral assignment to a lender. Upon request by Owner, Company shall use reasonable efforts to cause any Subcontractor identified by Owner to enter into such consents or estoppels required in connection with any lender.

2.10.4 Company shall use reasonable efforts to obtain from all Subcontractors any additional representations, warranties, guarantees, and obligations requested by Owner. On the Substantial Completion Date, Company shall assign to Owner all warranties of all Subcontractors that survive the Substantial Completion Date (the "Surviving Subcontractor Warranties"), effective as of the Substantial Completion Date. To the extent assignable, Company shall assign to Owner all other representations,

warranties, guarantees and obligations of all Subcontractors that survive the Warranty Period effective as of the end of the Warranty Period.

2.10.5 Company shall ensure that Subcontractors and sub-Subcontractors are registered for workers compensation coverage where required by law, during the entire time that any persons are employed by Subcontractor on the Project Site in connection with the Project.

2.11 Labor and Personnel

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2.11.1 Company's Project Manager. Selection of the Company's Project Manager shall be subject to the consent of Owner. The Company's Project Manager may be changed by Company upon the receipt of the consent of Owner, which may be withheld in Owner's sole discretion. The foregoing notwithstanding, Company's Project Manager may be changed by Company due to the death, disability or voluntary resignation of the Company's Project Manager, provided that the replacement Company's Project Manager shall be subject to the prior written consent of Owner. Owner may request that Company change the Company's Project Manager and Company will comply with such request. The Company's Project Manager shall have the responsibility, authority and supervisory power of Company for construction, procurement, testing and start-up of the Work, as well as all matters relating to the administration of the provisions of this Agreement, and will be primarily located at the Project Site on a daily basis. All communications between Owner and Company's Project Manager shall be deemed to be given to or received by Company.

2.11.2 Engagement of Personnel. Company shall provide, manage, and transport all Personnel required in connection with the performance of the Work and of its obligations hereunder, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; (b) Company's Project Manager, pursuant to Section 2.11.1; (c) lead project engineer, field engineers, and cost and schedule engineers; and (d) supervisors for the Work, all of whom shall have experience with solar-powered electric generation equipment similar to the equipment (in technology and magnitude to the extent relevant to the Work being performed) necessary to construct the Work and who are competent to perform their assigned duties in a safe and secure manner. Company shall require its Subcontractors to adhere to the same standard with respect to their Personnel. Where required by Applicable Laws, Company shall employ only licensed Personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. To the extent required by Applicable Laws and Prudent Solar Industry Practices, all Personnel shall have received formal documented training in their area of expertise and certification.

2.11.3 Owner Review of Personnel. Company shall identify each supervisory member of its Personnel along with such other information regarding the identity and responsibility of Company's Personnel as Owner may request or otherwise require as a Company Deliverable. Upon Owner's request, Company shall provide Owner with the resumes of all management and supervisory Personnel employed in connection with the Work, and Owner may require and Company shall cause the replacement of any

Personnel, at Company's sole expense, if, in Owner's reasonable opinion, such Person is (a) endangering life or limb on or near the Project Site, (b) incompetent, or (c) violating or has violated this Agreement, particularly the Safety Plans and Sections 2.12.5 through 2.12.7 or Applicable Law. Rejection of Company's Personnel or Personnel of a Subcontractor by Owner shall not relieve Company of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under this Agreement.

2.11.4 Alcohol and Drugs. Company shall not, and shall ensure that its Personnel and Subcontractors do not, possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Laws) at the Project Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors or Personnel. Subject to requirements of Applicable Laws, Company shall have in place a drug and alcohol testing program that includes pre-employment and reasonable cause-based drug testing and random drug and alcohol testing on Company's Personnel and shall at all times comply with Owner's Alcohol and Other Drugs Procedure, attached hereto as Exhibit F, unless and until such procedure is replaced with a substantially similar Company policy approved by Owner in Owner's sole discretion. Company shall immediately identify and remove from its employment, or, as applicable, require its Subcontractors to remove from the Project Site, any Person (whether in the charge of Company or any of its Subcontractors) that violates this Section 2.11.4, or any other Person, including any Person using a prescription drug under supervision of and approval from a medical doctor, who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any Person or property.

2.11.5 Arms and Ammunition. Company shall not, and shall ensure that its Personnel and Subcontractors do not, possess, import, sell, give, barter or otherwise dispose of, to any Person or Persons, any arms or ammunition of any kind at the Project Site, or permit or suffer the same as aforesaid, and shall at all times assure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Company or its Personnel, or other invitees, shall be permitted on the Project Site. Company shall immediately identify and remove from the Project Site any Person that violates this Section 2.11.5.

2.11.6 Disorderly Conduct. As between Owner and Company, Company shall be responsible for the conduct and deeds of its Personnel relating to this Agreement and the consequences thereof. Company shall, and shall cause its Personnel and Subcontractors to, at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Personnel and for the preservation of peace, protection and safety of Persons and property in the area of the Project Site against the same. Company shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

2.11.7 Labor Disputes. Company shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Company shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative

agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Company shall advise Owner promptly, in writing, of any actual or threatened (in writing) labor dispute, of which Company has knowledge that might materially affect the performance of the Work by Company or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.12 Responsibility for the Project Site

2.12.1 Selection of Project Site.

(a) In the event Company is unable to obtain all Governmental Authorizations and Permits necessary under Applicable Law for the construction, operation, and maintenance of the Project on the Project Site, including those Governmental Authorizations and Permits listed on Exhibit G, on or before March 31, 2023, Owner may, in its sole discretion, reject the Project Site, in which event Company will select an alternate Project Site reasonably acceptable to Owner. After the selection of such alternate Project Site, Company will submit the Project Site Diligence Materials for Owner's approval. Within ten (10) Days after receipt of the Project Site Diligence Materials, Owner will notify Company in writing of either (i) Owner's acceptance of the alternate Project Site ("Project Site Approval"), (ii) Owner's rejection of the alternate Project Site setting forth in reasonable detail which of the Approval Criteria the alternate Project Site has failed to satisfy, or (iii) a request for additional information reasonably required by Owner to evaluate the Approval Criteria, in which case Owner will deliver notice to Company either accepting or rejecting the alternate Project Site within ten (10) Days after receipt of such additional information. For the avoidance of doubt, Owner will not be entitled to reject the alternate Project Site for any reason other than its failure to satisfy the Approval Criteria.

(b) In the event Owner rejects the alternate Project Site selected by Company pursuant to Section 2.12.1(a), Company will select an alternate Project Site reasonably acceptable to Owner. After the selection of such alternate Project Site, Company will submit the Project Site Diligence Materials for Owner's approval pursuant to Section 2.12.1(a) within ten (10) Days of selection of such alternate Project Site. The process set forth in this Section 2.12.1 will continue until a Project Site is approved by Owner pursuant to Section 2.12.1(a).

2.12.2 Project Site Diligence. As of the Effective Date, subject to Section 2.12.4 as regards Unforeseen Site Conditions, Company represents and warrants that (a) it has inspected and is fully familiar with the Geotechnical Constructability Survey and other Project Documents including the supplied pile test and the Project Site (including the boundaries and the general character and accessibility thereof, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions (including Applicable Laws) (b) it has completed a reasonably diligent inspection of the Project Site and has inspected all other reports, investigations, test data and other documents relating to the Work and the Project Site that have been provided to or prepared by the Company, (c) the Project Site is

sufficient for Company to undertake and complete that portion of the Project to be located thereon in accordance with this Agreement, the Specifications and Applicable Laws, and (d) Company has not discovered any conditions that in its reasonable judgment would be a basis for claiming a Change.

2.12.3 Topography. Company will be responsible for clearance of the Project Site, including the removal of obstructions. Company will be responsible for access road construction as described in the Scope of Work. Company shall provide for the procurement or disposal, as necessary, of all soil, gravel and similar materials required for the performance of, or otherwise in connection with, the Work. Company will provide adequate treatment of and protection against water runoff resulting from the Work. Company will provide for the collection, treatment and disposal of groundwater resulting from the Work.

2.12.4 Unforeseen Site Conditions. "Unforeseen Site Conditions" shall mean:

(a) Subsurface or latent physical conditions at the Project Site differing materially from those indicated in the Geotechnical Constructability Survey or the Drawings and Specifications for the Work;

(b) Previously unknown physical conditions at the Project Site of an unusual nature (including unknown and unexpected archaeological or religious sites, places, monuments or areas) that require means and methods that differ materially from the recommendations that are contained in Geotechnical Constructability Survey;

(c) Any unknown and unexpected caverns, fissures or voids not discovered in connection with the Geotechnical Constructability Survey; or

(d) Presence at the Project Site of any of the following, in each case where such were not known by or disclosed to Company (in the Project Documents or otherwise) and were not reasonably expected to be encountered at the Project Site: (i) religious artifacts, (ii) cultural or historical locations or items, or (iii) flora or fauna (including, but not limited to, endangered species, threatened species or "species of concern") that are protected under Applicable Laws requiring disposal, handling, mitigation, or avoidance measures. Notwithstanding anything to the contrary, "Unforeseen Site Conditions" shall not include any conditions which Company knew or should have known following a reasonable diligent inspection and review of the Project Documents and other materials identified in Section 2.12.1. If Company encounters any condition that Company believes is or may be an Unforeseen Site Condition, Company shall notify Owner of the same within seventy-two (72) hours of discovery of such believed-to-be Unforeseen Site Condition.

2.12.5 Religious and Archaeological Resources. If any archaeological or religious sites, places, monuments or areas are discovered or identified by Company during the performance of the Work under this Agreement, Company shall, and shall cause its Personnel and Subcontractors to, leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area. Company shall notify Owner of any such discovery as soon as practicable, and Company shall carry out Owner's reasonable

instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, religious, cultural or similar interest discovered on the Project Site shall, as between Owner and Company, be deemed to be the property of Owner. Company shall prevent its Personnel from removing or damaging any such article or thing.

2.12.6 Real Property Requirements and Real Property Rights. In the performance of the Work, Company and its Subcontractors shall at all times remain within the Project Site boundaries or any easement corridors as surveyed and staked. Pursuant to Section 12.1.1, Company shall indemnify, release, defend, and hold the Owner Indemnified Parties harmless from any claims or expenses arising out of the failure of Company or its Subcontractors to comply with this Section 2.12.6. Company shall promptly notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Company shall cooperate with Owner in resolving all such problems.

2.12.7 Clean-up. Company shall, and shall cause its Personnel and Subcontractors to, maintain the Project Site in a neat and orderly condition in accordance with Prudent Solar Industry Practices throughout the performance of the Work and take such measures as are reasonable in accordance with Prudent Solar Industry Practices to prevent access to the Project Site of any persons or creatures not entitled to be there. Company shall at all times keep the Project Site reasonably free from waste materials, rubbish. As part of the Work, Company will arrange and pay for disposal of sewage and wastes as necessary to enable Company to perform the Work. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Article XIII, Company shall (a) remove all Company's Equipment from the Project Site, (b) tear down and remove all temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed solar-power plant, (c) reclaim, in accordance with the applicable Prudent Solar Industry Practices and Applicable Permits, laydown areas and other construction areas as required by Prudent Solar Industry Practices and any Applicable Permits, and (d) remove and dispose of all waste and rubbish from and around the Project Site. Company shall provide to Owner all legally required waste disposal manifests, if any, upon request.

2.12.8 Damages to Infrastructure. Company shall be responsible for (and reimburse Owner for) any damage it and its Personnel cause to any known infrastructure existing at the Project Site, including pipelines, irrigation systems, utility lines and wells.

2.13 Company Permits. Company shall, at Company's cost and expense, timely obtain and maintain all Company Permits. Company shall give the notices and pay for all fees required to be given or paid to any Government Authority in relation to all such Company Permits. In addition, Company shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits. All Applicable Permits (other than any building Permit) designated as either "To be issued in the name of Owner" or "To be

issued in the name of Owner and Company" shall be, if possible, issued in the name of Owner or Company and Owner, as required, to the best of Company's ability unless otherwise required by Applicable Laws or such Applicable Permit. If any Company Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the reasonable request of Company, sign such application or take such action as reasonably appropriate. Owner reserves the right to review and shall be permitted a reasonable time to review and comment on any such application of Company; provided, however, that Owner's exercise of such right shall not, under any circumstances, be considered an approval of the necessity, effect or contents of such application or related Permit or be allowed to unreasonably delay the submittal of such application. Company shall deliver to Owner true and complete copies of all Permits obtained by Company upon its receipt thereof.

2.14 Environmental Compliance. Company shall, and shall cause its Personnel and Subcontractors to, comply with all environmental assessment requirements and with all Applicable Law relating to the environment, health or safety applicable to Company and/or the Work, including those set forth in any Applicable Permit.

2.15 Hazardous Materials.

2.15.1 Company Duties. Company shall, and shall cause its Personnel and Subcontractors to, comply with all Applicable Laws and Applicable Permits relating to Hazardous Material. Without limiting the generality of the foregoing: (a) Company shall, and shall cause its Subcontractors to, have a Release prevention and response plan to contain and clean up any spills or emissions of Hazardous Material by Company or its Personnel (such plan to be made available to Owner upon Owner's request); (b) Company shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Company by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work; (c) Company shall, and shall cause its Subcontractors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Material introduced to the Project Site by Company if and as required under Applicable Laws and any disposal manifest or other records of such Hazardous Materials shall identify Company as the generator of such Hazardous Materials; (d) Company shall conduct its activities under this Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other Release by Company and its Subcontractors; (e) neither Company nor its Subcontractors shall bring Hazardous Material to the Project Site or transport Hazardous Material from the Project Site, except in accordance with Applicable Laws and then only to the extent such Hazardous Materials are necessary for the Work, and neither Company nor its Subcontractors shall cause the Release or disposal of Hazardous Material at the Project Site; (f) Company shall manage, investigate, remove, remediate and properly dispose of all Hazardous Material Released, brought onto, introduced to or known by the Company, to exist on or under the Project Site by it or its Subcontractors, if any; (g) Company shall cause all such Hazardous Material Released, brought onto or introduced to or known by the Company, to exist on or under the Project Site by it or its Subcontractors, if any, (1) to be transported only by carriers maintaining valid Hazardous Material transportation Permits (as required) and operating in compliance with such Permits and laws regarding the transportation of Hazardous Material and only pursuant to

manifest and shipping documents identifying only Company as the generator of waste or Person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid Permits (as required) regarding Hazardous Material; (h) Company shall submit to Owner a list of all Hazardous Material to be brought onto or introduced to the Project Site or at any construction area related to the Work prior to bringing or introducing such Hazardous Material and shall maintain an accurate record and current inventory thereof, and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Material; and (i) Company shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

2.15.2 Remedial Actions.

(a) If Company or any of its Subcontractors Releases any Hazardous Material on, at, or from the Project Site, or becomes aware of any Person who has stored, Released or disposed of Hazardous Material on, at, or from the Project Site during the Work, Company shall immediately notify Owner in writing. If Company's Work is involved in the area where such Release occurred, Company shall immediately stop any Work and proceed as set forth in Section 2.15.2(b) or (c) as applicable.

(b) Company shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up and remediate fully to the reasonable satisfaction of Owner and dispose of, in accordance with Applicable Laws, any contamination including a Release, whether on or off the Project Site, caused by (i) any negligent Release by Company or any of its Subcontractors or their Personnel of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing any previously unknown Pre-Existing Hazardous Material is not a negligent Release of such Pre-Existing Hazardous Material, but that Company will act reasonably and prudently with respect to the same upon discovery) and (ii) any Hazardous Material that was brought onto or generated at the Project Site by Company or any of its Subcontractors or their Personnel.

(c) If Company discovers any Pre-Existing Hazardous Material that has been stored, Released or disposed of at the Project Site, Company shall immediately notify Owner in writing. If Company's Work involves the area where such a discovery was made, Company shall immediately stop any Work affecting the area and confer with Owner to determine a reasonable course of action for Company to remove such Pre-Existing Hazardous Material and Company will diligently proceed to take all necessary or desirable remedial action to clean up and remediate fully to the reasonable satisfaction of Owner and dispose of, in accordance with Applicable Laws, any such Pre-Existing Hazardous Material. Company will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Company is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Material), Company will be entitled to a Change Order as set forth in Section 10.5.1(e). Company shall not, and shall cause its Subcontractors not to, take any action that may exacerbate any such contamination.

2.16 Safety and Emergencies.

2.16.1 Safety. Company shall initiate and maintain safety precautions and programs to conform with the Specifications or other requirements designed to prevent damage, injury or loss to (a) all Persons; (b) the Work and all materials and Equipment to be incorporated into the Work, whether in storage, on or off the Project Site, under the care, custody or control of Company; (c) all public and private property (including structures, sewers and service facilities above and below ground and along, beneath, above, across or near the Project Site) that are at or near the Project Site that are in any manner affected by the performance of the Work and (d) the work of Owner, Owner's Engineer, Owner's Project Manager, and other contractors of Owner. Such precautions and programs shall include prevention of damage or injury to local flora and fauna. Company shall erect and maintain reasonable safeguards for the protection of its Personnel and the public. Company shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. No later than 60 Days prior to the commencement of Work on the Project Site, Company shall deliver to Owner a safety plan setting forth policies and procedures to ensure safe performance of the Work. Owner will have 15 days following receipt of such safety plan to either approve such draft or provide comments on the draft safety plan submitted by Company and Company will incorporate such comments, subject to Prudent Solar Industry Practice and Applicable Laws, and provide a revised draft within 15 days of receipt thereof. Such revised draft will be subject to Owner's review and comment as set forth above in this Section 2.16.1. Company shall, and shall cause all of its Personnel to, follow the safety plan as ultimately approved by Owner pursuant to this Section 2.16.1 and to follow all other reasonable safety measures and procedures implemented or requested by the Owner with respect to the Project Site.

2.16.2 Emergencies. In the event of any emergency endangering Persons or property resulting from or related to performance of the Work, Company shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as practicable, report any such incidents, including Company's response thereto, to Owner. Whenever Company has not taken reasonable precautions for the safety of the public or the protection of the Project or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, upon reasonable advance notice to Company and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner's failure to do so shall not limit Company's obligations or liability hereunder. Provided Company fails to timely act to respond to an emergency pursuant to this Section 2.16.2, Owner may take actions to respond to such emergency and Owner shall have the right, at its sole discretion and election, either to (a) invoice Company for any reasonable costs incurred by Owner or its other contractors in taking such actions, payable by Company within thirty (30) Days of Company's receipt of such invoice or (b) offset any such costs against payment of the Contract Price pursuant to Section 5.10.

2.16.3 Fire Prevention. Company shall provide adequate fire prevention and protection at the Project Site and shall take all reasonable precautions to minimize the risk of fire at the Project Site. Company shall provide instruction to its Personnel in fire prevention control. Company shall provide appropriate fire-fighting and fire protection

equipment and systems at the Project Site in a manner consistent with the Specifications. Notwithstanding the foregoing sentence, this Agreement shall not and does not obligate Company's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Company's or any of its Subcontractors' employees shall immediately take steps to ensure the safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Company shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.

2.17 Security. Company shall take reasonable precautions, consistent with the Specifications and Exhibit A-1, to provide for the security and protection: (a) of the Equipment and the Owner-provided Equipment, if any, (upon delivery to the Project Site) through the Substantial Completion Date and (b) of the other property owned or leased by Company or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Substantial Completion Date. Company shall use the same care to protect any of Owner's property at any time such property is in its possession or under its control while performing the Work as it does with its own property and shall be responsible for (and reimburse Owner for) damage to such property resulting from Company's failure to take such precautions or use such care.

2.18 Operating Manuals and Job Books. As a condition to Substantial Completion, Company shall deliver to Owner two (2) copies of the semi-final draft of the Job Books. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Project by Persons generally familiar with similar machinery and equipment. Upon the earlier of Final Completion and thirty (30) Days after Substantial Completion, Company shall provide three (3) original hard copy sets and two (2) electronic copies (on CD Roms) of the final and complete Job Books to Owner. Where any of the information in the Job Books was produced by computer-aided design and is available to Company or any Subcontractor, Company shall provide or cause to be provided to Owner an electronic copy of such information.

2.19 Owner's Right to Inspect; Correction of Defects

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2.19.1 Right to Inspect. Owner, Owner's Engineer, and their respective authorized representatives shall have the right to inspect the Work and to maintain Personnel at the Project Site for such purpose, subject in all cases to the Safety Plans. Such Persons shall have the right to be present during commissioning and testing of the Project and shall, by way of example and not limitation, have reasonable access to test procedures, quality control reports, and test reports and data. Company will cause all Major Subcontracts to include, and will use commercially reasonable efforts to cause all other Subcontracts to include, rights in all Subcontracts to permit Owner, Owner's Engineer, and any of their respective authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor or the manufacturer of Equipment, or the location where such Equipment is being transported, and, if permitted, Company shall ensure reasonable, adequate and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such

Subcontractor or manufacturer. Company will give Owner at least fifteen (15) Days' notice of any testing or commissioning or the covering of any Work so as to give Owner the opportunity to exercise its right to inspect the Work. If any portion of the Work should be covered contrary to the timely request of Owner or Owner's Engineer or contrary to requirements specifically expressed in this Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Company's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Company shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacing and re-covering shall be charged to Company; otherwise, Company shall be entitled to a Change Order equitably adjusting the Contract Price to the extent the costs of Company in performing the Work are increased in connection with uncovering and re-covering the Work. Such inspection of any part of the Work shall in no way relieve Company of its obligation to perform the Work in accordance with this Agreement. If Company covers any portion of the Work after offering Owner the opportunity to inspect such Work and Owner later requests Company uncover such Work, then Owner shall pay the costs to uncover such Work unless it is found to contain a Defect.

2.19.2 Correction of Defects. Prior to Final Completion, if Company becomes aware that any Work contains a Defect or a root-cause analysis using Prudent Solar Industry Practices indicates the existence of a Defect, Company shall, at its own cost and expense, correct or replace the Work that contains such Defect or is not otherwise in compliance with the Specifications. Defective Equipment that has been replaced, if situated on the Project Site, shall be removed by Company at Company's sole cost and expense.

2.19.3 Inspection Not Approval. No inspection (or failure to inspect), acceptance, payment or approval by Owner shall relieve Company of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or that is not in accordance with the requirements of this Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period.

2.20 Solar Incentive Programs. Company acknowledges that Owner shall have all right, title and interest in and to all Environmental Attributes and Renewable Energy Incentives, and other items of whatever nature which are available as a result of energy being produced from the Project. If any Environmental Attributes, Renewable Energy Incentives or other items are initially credited or paid to Company, Company will cause such Environmental Attributes, Renewable Energy Incentives and other items to be assigned or transferred to Owner without delay.

2.21 Intellectual Property Rights.

2.21.1 Company shall obtain and, to the extent described below, maintain all trade secrets, patents, copyrights, trademarks, proprietary rights and information, licenses and other intellectual property rights (collectively, the "Intellectual Property Rights") necessary for the incorporation, performance and use of the Work, except those

Intellectual Property Rights related to the Owner-provided Equipment, which shall be obtained and maintained by Owner. Company hereby grants to Owner an irrevocable, assignable, non-exclusive, perpetual, royalty-free, sublicensable license under all Company Intellectual Property Rights, whether now existing or hereafter developed for the Work and whether now or hereafter owned, licensed to or controlled by Company or any of its Affiliates, to use the same only to the extent necessary for the completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Project and all subsystems and components thereof. To the extent that such license is predicated upon Intellectual Property Rights held by Company, Company will maintain those Intellectual Property Rights throughout the life of the Project; otherwise, Company's obligation to maintain Intellectual Property Rights hereunder will expire with the expiration of the Warranty Period.

2.21.2 Company hereby presently assigns, sells and transfers to Owner (or its designee or assignee), and shall cause all of Company's Affiliates and Subcontractors, to presently assign, sell and transfer to Owner (or its designee or assignee), all right, title and interest in any third party Intellectual Property Rights acquired or licensed in connection with completion of the Work, including all right to sue for past, present and future infringement or misappropriation of such Intellectual Property Rights and recover and retain damages for any such infringement or misappropriation.

2.21.3 Except as expressly set forth in this Section 2.21, the Parties agree that ownership of all Intellectual Property Rights shall be governed by the provisions of Article 9 of the Development Agreement. To the extent of any disagreement between the terms of this Agreement (other than those set forth in this this Section 2.21) and the Development Agreement, the provisions of the latter shall control.

2.22 Books and Records. Company shall keep such books, records, documents, correspondence and accounts as may be necessary for compliance with its obligations under this Agreement and shall maintain such items for a minimum of five (5) years after the Final Completion Date, or a longer period of time as may be required by applicable law or Government Authority. Upon Owner's request, Company shall provide to Owner copies of such records related to the Work or Change Orders as are reasonably necessary to verify Company's and its Subcontractors' compliance under this Agreement. In addition, within a reasonable period of time after a request therefore, Company shall provide Owner with any information regarding quantities and descriptions of the Work that Owner reasonably deems necessary in connection with the preparation of its tax returns and other regulatory compliance filings. Owner (or any of its duly authorized representatives), at Owner's cost and expense, shall have the right upon reasonable advance notice and at Company's principal offices or such other location mutually agreeable by the parties, to timely audit, and make examination, excerpts, copies and transcriptions of, Company's books, records documents, correspondence and accounts only as necessary to verify costs associated with the Work and Change Orders. Notwithstanding anything to the contrary, any request for information, inspection or audit referred to above in this Section 2.22 shall be scheduled and conducted in such a manner that minimizes interference with the Company's business and affairs, and shall be limited to no more than once per every four (4) weeks while Company is performing the Work and two (2) times per calendar year any time thereafter. Any information obtained by Owner shall be subject to the provisions of Section 16.4 regarding confidentiality.

2.23 Cooperation. Company shall facilitate the activities of and reasonably cooperate with Owner in Owner's efforts to meet the information, notice, communication and coordination requirements of any agreement entered or to be entered into by Owner with third parties in connection with the construction, operation, maintenance or financing of the Project.

2.24 Owner's Engineer. Company acknowledges and agrees that:

(a) Owner's Engineer's prior approval may be required, in Owner's sole discretion, in connection with all matters relating to the Work which would require Owner's approval pursuant to the terms and provisions hereof and consistent with such terms and revisions, including any Change Orders; and

(b) the investigations, reviews, inspections and monitoring referred to in Article II may also be carried out by the Owner's Engineer and any countersignatures of Owner referred to in Article II may also be required by Owner, in Owner's sole discretion, to be obtained from the Owner's Engineer.

(c) Owner's Engineer shall be selected by Owner. Owner shall be responsible for payment of all costs, expenses and compensation of any kind due and payable to Owner's Engineer in connection with its services rendered hereunder.

2.25 Company Usage Rights. Owner and Company acknowledge and agree that a material inducement and consideration for Company's execution of this Agreement was that Owner would grant to Company the right to access and use the facility for certain purposes outlined in Exhibit Q (such rights, the "Company Usage Rights"). Owner hereby grants to Company the Company Usage Rights upon the conditions contained and otherwise as outlined in Exhibit Q.

2.26 Security. As of the Effective Date, Company has caused Heliogen Inc. to deliver the payment and performance guaranty attached hereto as Exhibit R guaranteeing in full Company's payment and performance obligations under this Agreement (the "Company Parent Guaranty"). Company shall cause the Company Parent Guaranty to be maintained in full force and effect for so long as Company has any obligations under this Agreement.

ARTICLE III

COMPLETION OF THE WORK

3.1 Commencement of Work; Project Schedule; Acceleration.

3.1.1 Commencement of Work. Company shall perform or cause to be performed the Work commencing on the date specified in the Notice to Proceed, or earlier with respect to Work authorized pursuant to a LNTP. Company shall not be authorized to perform any Work that is not authorized pursuant to a LNTP or the Notice to Proceed, as applicable.

3.1.2 Project Schedule; Monthly Progress Reports.

(a) Company shall perform the Work in accordance with the Project Schedule. No later than 15 Days following delivery of the "Full FEED Package" (as set forth in the Design Delivery Schedule), Company shall deliver to Owner a revised draft of Exhibit C-1.1 that includes any additions or changes to the Project Schedule as a result of design process. Owner will have 15 days following receipt of such revised Exhibit C-1.1 to either approve such draft or provide comments on the draft Exhibit C-1.1 submitted by Company, and Company will incorporate such comments and provide a revised draft within 15 days of receipt thereof. Such further revised draft of Exhibit C-1.1 will be subject to Owner's review and comment as set forth above in this Section 3.1.2(a). Upon approval of the revised Exhibit C-1.1 pursuant to this Section 3.1.2(a), this Agreement will be amended to replace Exhibit C-1.1 with such revised Exhibit C-1.1 For the avoidance of doubt, no such revision to Exhibit C-1.1 will entitle Company to any Change Order.

(b) Company shall provide Owner with Progress Reports as further defined in Exhibit A-1 and as Owner may reasonably request, which shall include progress reports, as compared to the Project Schedule, including the incorporation of delay and acceleration analyses where appropriate. The Progress Reports shall be presented electronically and shall address all material elements of the Work. Company shall conduct weekly Project meetings and additional Project meetings at either Party's reasonable request, in each case at mutually agreeable locations or by telephone between representatives of Company and Owner, which may include Owner's Engineer, to review the status of the Work including without limitation (i) status of delivery and installment of any materials and Equipment required to be delivered under this Agreement; (ii) any proposed or anticipated changes in the Work or Equipment; and (iii) any other matters as may be requested by either Party. Company shall promptly notify Owner in writing at any time that Company has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Company. Delivery of such notice shall not relieve Company of its obligations under this Article III.

3.1.3 Acceleration of Work. If, at any time or from time to time, Company fails to achieve a Key Milestone by the date required therefor in the Project Schedule or fails to show adequate progress toward the achievement of a Key Milestone and such failure is not explicitly excused under this Agreement due to an Owner-Caused Delay or a Force Majeure Event or pursuant to a Change Order executed by both Parties, then, upon written request of Owner, Company shall promptly, but in any event within ten (10) Business Days of such date, submit a written recovery plan to complete all necessary Work to the extent reasonably practicable by the dates for the remaining Key Milestones. Owner shall promptly approve or submit reasonable revisions to such written recovery plan, which Company shall incorporate into such recovery plan. Company shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Owner of such recovery plan (or Owner's comments or failure to provide comments) nor Company's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Company of its obligations under this Agreement relating to the failure to timely achieve any Key Milestone by the date required therefor

or (ii) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Neither submittal of such recovery plan nor prosecution of the Work by Company in accordance therewith shall be deemed to waive Company's right to a Change Order due to any delay caused by a Force Majeure Event or an Owner-Caused Delay.

3.2 Mechanical Completion

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3.2.1 Conditions of Mechanical Completion. "Mechanical Completion" shall occur when each of the conditions set forth on Exhibit O-1 has been satisfied in accordance with the Specifications.

3.2.2 Confirmation of Mechanical Completion. When Company believes it has satisfied all of the requirements for Mechanical Completion, Company shall submit a Mechanical Completion Certificate to Owner. Within ten (10) Business Days following the date on which a Mechanical Completion Certificate is received by Owner, Owner (or Owner's agent) shall review and inspect all Work related thereto and shall either (a) countersign and deliver to Company the Mechanical Completion Certificate or (b) if reasonable cause exists for doing so, notify Company that Mechanical Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner's reasons for rejecting such Mechanical Completion Certificate. If Mechanical Completion has not been achieved and Owner delivers the notice under clause (b) above, Company promptly shall take such action, including the performance of additional Work, so as to achieve Mechanical Completion. Upon completing such actions, Company shall issue a new Mechanical Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until Mechanical Completion is achieved. If Owner fails to respond within ten (10) Business Days to the Mechanical Completion Certificate provided by Company, Company will provide notice to Owner of such failure to respond and, if Owner fails to respond within ten (10) Business Days of such notice of failure, Mechanical Completion shall be deemed to have been achieved, provided such deemed Mechanical Completion shall not relieve Company from (and shall not waive any right of Owner with respect to) any of Company's obligations hereunder, including (notwithstanding the foregoing) Company's obligations to actually achieve Mechanical Completion. For all purposes of this Agreement, the date of achievement of Mechanical Completion shall be the date of the Mechanical Completion Certificate that is ultimately accepted by Owner or, if applicable, deemed approved by Owner ("Mechanical Completion Date"). Any disagreement about the achievement of Mechanical Completion is subject to the dispute resolution process in Article XV.

3.3 DOE Testing.

3.3.1 DOE Tests. As a condition to the achievement of Substantial Completion, Company shall be responsible to ensure that the DOE Tests are conducted and completed in accordance with the requirements set forth in Exhibit O-3. Company's suitably qualified personnel (or the personnel of a Subcontractor acting under Company's supervision) shall schedule, manage and oversee the operation of the Project and the Equipment during the DOE Tests, and Owner must provide such electricity as may be necessary or required by Company to carry out the DOE Tests. Company shall provide

Owner and Owner's Engineer with at least three (3) Business Days' prior written notice of the commencement of each DOE Test, in order to permit Owner, Owner's Engineer and Owner's representatives to arrange attendance at the DOE Test. Owner, Owner's Engineer, any Owner's representatives, and any quality consultant notified to Company by Owner in writing prior to the date of the test shall be entitled to attend and observe each DOE Test.

3.4 Substantial Completion.

3.4.1 Conditions of Substantial Completion. "Substantial Completion" shall occur when each of the conditions set forth on Exhibit O-5 has been satisfied in accordance with the Specifications.

3.4.2 Confirmation of Substantial Completion. When Company believes it has satisfied all of the requirements for Substantial Completion, Company shall submit a Substantial Completion Certificate to Owner. Within ten (10) Business Days following the date on which a Substantial Completion Certificate is received by Owner, Owner (or Owner's agent) shall review and inspect all Work related thereto and shall either (a) countersign and deliver to Company the Substantial Completion Certificate or (b) if reasonable cause exists for doing so, notify Company that Substantial Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner's reasons for rejecting such Substantial Completion Certificate. If Substantial Completion has not been achieved and Owner delivers the notice under clause (b) above, Company promptly shall take such action, including the performance of additional Work, so as to achieve Substantial Completion. Upon completing such actions, Company shall issue a new Substantial Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until Substantial Completion is achieved. If Owner fails to respond within ten (10) Business Days to the Substantial Completion Certificate provided by Company, Company will provide notice to Owner of such failure to respond and, if Owner fails to respond within ten (10) Business Days of such notice of failure, Substantial Completion shall be deemed to have been achieved, provided such deemed Substantial Completion shall not relieve Company from (and shall not waive any right of Owner with respect to) any of Company's obligations hereunder, including (notwithstanding the foregoing) Company's obligations to actually achieve Substantial Completion. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date of the Substantial Completion Certificate that is ultimately accepted by Owner or, if applicable, deemed approved by Owner. Any disagreement about the achievement of Substantial Completion is subject to the dispute resolution process in Article XV.

3.5 Punch List.

3.5.1 Development of Punch List. Prior to submittal of the initial Substantial Completion Certificate, Company will prepare and deliver to Owner and Owner's Engineer a written list setting forth all of the items that remain to be performed in order to complete the Work, provided such items of Work on such list shall only be items that are (i) minor in nature, (ii) not related to the functionality, utility, operation or restoration Work, and (iii) not related to the compliance of any such Work with any Applicable Laws

or Applicable Permits. Such list shall also state the proposed time limits within which Company will complete each such item of remaining Work. No later than ten (10) Business Days after receipt of such list, Owner or Owner's Project Manager will notify Company of any proposed revisions thereto and comments thereon. Owner's Project Manager and Company's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list (including the approved time limits within which Company will perform such remaining Work items) (such final list, as agreed to in writing by Owner, the "Punch List").

3.5.2 Completion of Punch List Items. Once any Punch List hereunder is agreed upon, Company will promptly begin performing the items of Work thereon. Company's Work on the Punch List shall be performed in a manner that does not unreasonably interfere with Owner's operation of the Project. Owner will provide Company with reasonable access to the Project Site so that Company may perform the Work on the Punch List.

3.6 Final Completion.

3.6.1 Conditions of Final Completion. "Final Completion" shall occur when each of the conditions set forth on Exhibit O-7 has been satisfied in accordance with the Specifications.

3.6.2 Confirmation of Final Completion. When Company believes it has satisfied all of the requirements for Final Completion, Company shall submit a Final Completion Certificate to Owner along with all documentation reasonably necessary to determine if Final Completion has been achieved. Within ten (10) Business Days following the date on which a Final Completion Certificate is received by Owner, Owner (or Owner's agent) shall review and inspect all Work related thereto and shall either (a) countersign and deliver to Company the Final Completion Certificate or (b) if reasonable cause exists for doing so, notify Company that Final Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner's reasons for rejecting such Final Completion Certificate. If Final Completion has not been achieved and Owner delivers the notice under clause (b) above, Company promptly shall take such action, including the performance of additional Work, so as to achieve Final Completion. Upon completing such actions, Company shall issue a new Final Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until Final Completion is achieved. If Owner fails to respond within ten (10) Business Days after Owner receives the Final Completion Certificate provided by Company, Company will provide notice to Owner of such failure to respond and, if Owner fails to respond within ten (10) Business Days of such notice of failure, Final Completion shall be deemed to have been achieved, provided such deemed Final Completion shall not relieve Company from (and shall not waive any right of Owner with respect to) any of Company's obligations hereunder, including (notwithstanding the foregoing) Company's obligations to achieve Final Completion. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date of the Final Completion Certificate that is ultimately accepted by Owner or, if applicable, deemed approved by Owner. Any disagreement about the achievement of Final Completion is subject to the dispute resolution process in Article XV.

ARTICLE IV
OWNER RESPONSIBILITIES

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

4.1 Project Site Access. As required by the Project Schedule, Owner shall provide access to the Project Site to Company, Subcontractors and their respective Personnel as necessary to perform the Work, provided that nothing in this Section 4.1 shall require that Owner construct additional access roads, entrances, or other access ways, which shall be the responsibility of Company pursuant to Section 2.12.3. In no event will any DOE personnel be granted access to the Project Site after Substantial Completion without the express written consent of Owner, which may be withheld in Owner's sole discretion.

4.2 Permits. Owner shall, with Company's reasonable assistance, timely obtain and maintain (or cause Owner to obtain and maintain) all Owner Permits, copies of which shall be delivered to Company. In addition, Owner shall execute such applications as Company may reasonably request in connection with obtaining any Company Permits to the extent such Company Permits cannot be executed by Company.

4.3 Owner-provided Equipment. Owner shall deliver, or arrange for the delivery of, the Owner-provided Equipment, if any, in accordance with the Project Schedule set forth in Exhibit C-1.2. Owner may, at Owner's sole discretion, accelerate the delivery of Owner-provided Equipment upon written request and acceptance by the Company.

4.4 Owner's Project Manager. Owner shall notify Company of its selection of the Owner's Project Manager. Owner may change the Owner's Project Manager upon providing written notice of the same to Company. Owner's Project Manager shall have the responsibility, authority and supervisory power of Owner for all matters relating to the administration of this Agreement; provided, however, that the Company acknowledges that Owner's Project Manager shall not be authorized to (a) amend, terminate, or assign the terms and conditions of this Agreement, or (b) execute a Change Order, and that any of the actions described in clauses (a) and (b) above require the signature of an officer of Owner. Except as set forth in clauses (a) and (b) above, the Owner's Project Manager shall be authorized to act for and bind Owner for all purposes under this Agreement.

4.5 Use of the Project. Owner represents and warrants to Company that no Vice President of Owner's Affiliate, Woodside Energy Limited, nor any individual more senior than the Vice Presidents in Woodside Energy Limited's organizational structure, intends to use the Project as a commercial, profit generating asset, including the connection of the Project to the grid for the sale of power, or to generate any research income. On the Final Completion Date, Owner shall provide an executed letter to Company to confirm that the representations and warranties contained in this Section 4.5 remain current as of the date of such letter. Such letter shall be in the form attached hereto as Exhibit J.

ARTICLE V
CONTRACT PRICE

5.1 Contract Price.

5.1.1 As full consideration to Company for the complete performance of the Work and Company's other covenants in this Agreement, Owner agrees to reimburse Company for Reimbursable Costs up to the Contract Price pursuant to the payments set forth in Section 5.2 (inclusive of sales or use tax and other similar local, state and federal taxes). Any costs or expenses of any kind incurred by Company, Subcontractor(s), or other suppliers in excess of the Contract Price shall be paid by such Company, Subcontractor(s), or suppliers without reimbursement by Owner except to the extent expressly set forth in any Change made in accordance with a Change Order entered into as provided in this Agreement.

5.1.2 Except with respect to any additions or deductions relating to authorized Change Orders issued in accordance with Article X, the Contract Price shall not be increased or decreased for any reason under this Agreement.

5.1.3 The Contract Price includes payment for all equipment, materials, labor, and services relating to Company's performance of its obligations under this Agreement and the Work (including all Work, materials, equipment, and services provided by Subcontractors), and includes sales or use taxes and all other applicable federal, state, and local taxes or licenses, in each case, that are imposed on or with respect to any such equipment, materials, labor, and services or otherwise arising out of Company's performance of the Work (collectively, "Services Taxes"), shipping charges and insurance, and all duties, fees, and royalties imposed with respect to any equipment, materials, labor, or services with respect to the Work. Company must use all commercially reasonable endeavors to reduce Services Taxes where possible including shipping charges and insurance, and all duties, fees, and royalties imposed with respect to any equipment, materials, labor, or services with respect to the Work. Notwithstanding the foregoing, Company will not be liable for (i) any property or ad valorem Taxes imposed on the Project and (ii) any federal, state, or local income or gross receipts, taxes or duties, fees, or royalties with respect to Owner's income or revenue from the Project (collectively, "Owner Taxes").

5.2 Payment of Contract Price. Company shall be reimbursed for the Reimbursable Costs in accordance with the Milestone Payment Schedule. The Milestone Payment Schedule sets forth the portion of the Contract Price to be paid by Owner to Company as Key Milestones are completed as well as the Monthly Progress Payments.

5.3 Invoicing and Payments.

5.3.1 Contractor shall submit to Owner a request for payment in the form set forth in Exhibit B-1 (each, a "Request for Payment") on or before the fifth (5^{th}) Business Day of each month for the payment of associated with each key Milestone completed during the previous month and the Monthly Progress Payment associated with such month.

5.3.2 After a Request for Payment has been finalized pursuant to the procedures set forth in this Section 5.3, and provided Company has complied with its obligations set forth in Section 5.8.1, Owner shall pay such applicable undisputed portion of Company's Request for Payment within twenty one (21) days after the Owner received the Request for Payment (the "Due Date"). Subject to a grace period of ten (10) Business Days, if Owner has not paid Company the payment due pursuant to this Section 5.3, the unpaid undisputed amount (or any unpaid undisputed portion thereof) shall accrue interest at a rate equal to 3% over the per annum rate of interest from time to time published in *The Wall Street Journal* under "Money Rates" as the prime lending rate, but not to exceed the maximum rate permitted by Applicable Law until such amount is paid or this Agreement has been terminated. Disputed amounts will be resolved pursuant to Article XV.

5.3.3 Each Request for Payment shall include: (a) an invoice, (b) the Progress Report detailing the current progress of the Work in relation to the Project Schedule and which Key Milestones on the Project Schedule were completed for during the month prior to the month in which the Request for Payment is being issued, (c) reasonably documented evidence of achievement of each such Key Milestone for which payment is sought and required to be achieved prior to such payment and (d) executed Lien Waivers and Releases as required by Section 5.8 below.

5.4 Deductions from Payments. Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make payments to Company hereunder, and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment, to such extent as may be reasonably necessary to protect Owner from loss because of or to the extent Owner or the Project is harmed or damaged by (a) Defects in the Work until remedied; (b) third-party claims threatened or filed against Owner because of the acts or omissions of Company; (c) Liens filed that Company is required to discharge under Section 5.8 (that have not been bonded off as described in Section 5.8); (d) Company or Subcontractor Liens that Company is required to waive and release pursuant to Section 5.8.1 (that have not been waived and released as described therein); (e) failure of Company to make undisputed payments when due to Subcontractors; (f) damage to Owner or another contractor, including damage to the property of Owner or any of its Affiliates, or to any other Person that may claim against Owner, in each case to the extent the costs of such damages are not covered by insurance maintained hereunder; (g) damages caused by Company or its Personnel; (h) Company's failure to deliver a recovery plan as set forth in Section 3.1.3 or the failure of Company to diligently proceed with the recovery plan; (i) a Company Event of Default or breach of this Agreement that has occurred or Owner has a claim against Company arising out of or relating the Work; or (j) Company's inability to achieve Substantial Completion before the Guaranteed Substantial Completion Date, as reasonably determined by Owner in good faith. Company shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of its rights under this Section 5.4. Owner shall release payments withheld pursuant to this Section 5.4 within fifteen (15) Days from the date when Company cures all such events or breaches to the reasonable satisfaction of Owner and Company has notified Owner of the same.

5.5 Final Reimbursable Costs. Within thirty (30) Days following the Final Completion Date, Company will submit to Owner a final accounting of the total Reimbursable

Costs permitted by the DOE after its audit of Reimbursable Costs (such total amount, the "Final Reimbursable Costs"), along with supporting documentation as may be requested by Owner.

5.6 Final Payment. Within thirty (30) Days following Final Completion of the Work, Company shall submit to Owner a final Request for Payment (the "Final Payment") for payment equal to: (i) the amount due and payable with respect to such achievement and any other withheld funds then due Company *minus* (ii) the amount, if any, by which the Contract Price exceeds the Owner's Share. Company shall also submit an executed conditional final Lien Waiver and Release from Company in the form of Exhibit M-3 and Exhibit M-4 (as applicable) and an executed conditional final Lien Waiver and Release from each Subcontractor performing the Work in such form as may be requested by Owner to establish the payment or discharge by Company of Company's obligations hereunder or to third parties in connection with the performance and Final Completion of the Work. Except as provided in Section 5.4, if the Final Payment is a positive number, Owner shall make the Final Payment to Company within thirty (30) days after the last of all of the following to occur: (a) the delivery to Owner of the Request for Payment for the Final Payment; (b) the Work has been completed and Final Completion has been approved by Owner; (c) evidence satisfactory to Owner that Company has satisfied all payrolls, taxes, liens, judgments, security interests, bills for materials and equipment, and all known indebtedness connected with Company's and any Subcontractor's Work; and (d) all warranties, operation and maintenance manuals, record drawings, and other close-out documents are received by Owner. If the Final Payment is a negative number, Company will pay the absolute value of the Final Payment to Owner within thirty (30) days.

5.7 Taxes. Company shall be responsible for and shall pay (or cause to be paid) all Taxes imposed upon its net income, all payroll and related Taxes of Company, all ad valorem or property Taxes imposed on Company's Equipment, all export and import Taxes, customs duties and similar levies associated with the Work, and all Services Taxes applicable to the Work and materials. All other taxes, fees, levies, or other governmental charges of any kind that are Owner Taxes shall be the exclusive responsibility of Owner. Company agrees to indemnify, defend, and hold each Owner Indemnified Party harmless against all Taxes, penalties, and interest resulting from Company's failure to remit properly Taxes, fees, levies, or other governmental charges for which Company is responsible under this Section 5.7. Owner agrees to indemnify, defend, and hold each Company Indemnified Party harmless against all Taxes, penalties, and interest resulting from Owner's failure to remit properly Taxes, fees, levies, or other governmental charges for which Owner is responsible under this Section 5.7. Company will comply with all applicable taxation Law and requirements in the place or places where the Work is being performed. Company will comply with all Laws relating to the Taxes. Owner will withhold from payments to Company such amounts as are required to be withheld under the Laws of any country and remit such payment to the Governmental Authorities. Owner will not be liable for, and Company will have no claims against Owner in respect to, any sum of money that would otherwise be payable to Company under this Agreement and that Owner has withheld from payment to Company and paid in accordance with the provisions of any Applicable Law to the Person legally entitled to accept payment.

5.8 No Liens.

5.8.1 Simultaneously with the delivery of each Request for Payment, Company shall submit to Owner written and executed conditional Lien Waivers and Releases in the form of Exhibit M-1 and Exhibit M-2 (as applicable) duly executed by Company and all Subcontractors with respect to any Work that has been invoiced by such Subcontractors and paid by Company at least thirty (30) days prior to Company's submission of such Request for Payment.

5.8.2 Provided that Owner has paid Company in accordance with the requirements of this Agreement, Company shall not directly or indirectly create, incur, assume, or suffer or permit to be created by it or any Subcontractor, employee, laborer, materialman, or other supplier of goods or services any Lien (other than, prior the Final Completion, the DOE Lien), and, to the extent that Owner has timely paid Company for Work performed hereunder, Company shall promptly pay or discharge and discharge of record, or bond, any such Lien or other charges that, if unpaid, might be or become a Lien.

5.8.3 If a Lien is filed, Company shall, at Company's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Laws, within thirty (30) Days after receipt of a written demand from Owner, any Lien (whether or not any such Lien is valid or enforceable, but excluding the DOE Lien prior to Final Completion) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Company, any Subcontractor, or any other Person providing Personnel or materials within the scope of Company's Work.

5.8.4 Upon the failure of Company to promptly discharge or cause to be released any Lien as required by this Section 5.8, within thirty (30) Days after notice to Company, Owner may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Lien and, upon such payment, discharge or posting of surety bond therefor, shall be entitled to immediately recover from Company the amount thereof together with all expenses incurred by Owner in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Owner to Company.

5.8.5 Company shall notify Owner of the filing or threatened filing of any Lien promptly upon learning of the existence or filing or threatened filing of such Lien. Acceptance by Company of the Final Payment shall constitute a release by Company of Owner, its Affiliates, and every officer and agent thereof from all Liens, claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Owner or of any Person relating to or affecting this Agreement, except claims for which Company has delivered an Arbitration Notice to Owner. No payment by Owner shall be deemed a waiver by Owner of any obligation of Company under this Agreement.

5.9 Disputed Invoices. If there is any dispute about any amount invoiced by Company, the amount not in dispute shall be paid in accordance with the terms of this

Agreement. Any disputed amount shall be paid to the party to whom payment is due promptly following resolution of the dispute.

5.10 Set off. Owner may deduct and set off against any part of the balance of the Contract Price or any other amount due or to become due to Company under this Agreement any amounts that are due by Company to Owner in connection with this Agreement.

ARTICLE VI
TITLE AND RISK OF LOSS

6.1 Title to Work. Upon Substantial Completion, Company will transfer the fee interest in the Project Site and all improvements located thereon, including, without limitation, the Project and Equipment, to Owner in each case free and clear of all Liens except Permitted Liens and the DOE Lien (which shall be removed prior to Final Completion) pursuant to a recordable special warranty deed in customary form for the jurisdiction where the Project Site is located. Company shall deliver customary forms of affidavits, certificates and other documents necessary for the Title Company to issue the Title Policy, and the Company will cause the Title Company to issue such Title Policy, at the Company's expense. Concurrent with Company's transfer of the Project Site to Owner pursuant to this Section 6.1, Company shall obtain and deliver to Owner an unconditional waiver and release of mechanics lien with respect to all work performed and materials provided to such date in connection of the Project, such that affirmative mechanic lien coverage will be provided in the Title Policy with respect to all such work and materials. Within thirty (30) days after Final Completion, Company shall (i) deliver to Owner an As-Built Survey and (ii) cause the Title Company to issue an endorsement modifying the Title Policy to reference the As-Built Survey, provide affirmative coverage with respect to mechanic liens and to provide other appropriate updates.

6.2 Title to Company Deliverables. Notwithstanding anything to the contrary in this Article VI, title to Company Deliverables, specifications and like materials (including the contents of the Job Books) that are owned by Company shall be transferred to Owner upon Substantial Completion. In addition, Company grants to Owner an irrevocable, assignable, royalty free, non-exclusive, sublicensable license to use and reproduce such Company Deliverables, specifications and other design documentation to which Company does not have title but has the right to grant sub-licenses for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 6.2. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses in the United States shall be paid by Owner.

6.3 Risk of Loss. Notwithstanding passage of title as provided in Section 6.1, Company hereby assumes the risk of loss for the Work and Equipment from the date hereof, including: (a) all Work completed on or off the Project Site and (b) all Work in progress. If any loss, damage, theft or destruction occurs to the Equipment or the Work or other items, on or off the Project Site, for which Company has so assumed the risk of loss hereunder, Company shall, at the option of Owner and at Company's cost, promptly repair or replace the property affected

thereby. Risk of loss for the Work shall pass from the Company to Owner (excluding Company's Equipment and other items to be removed by Company, which shall remain the responsibility of Company) upon the Substantial Completion Date, provided, however, Company shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Company's or its Personnel's negligent acts or omissions, and/or failure to comply with the requirements of this Agreement. Notwithstanding the foregoing, if Company is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Company shall bear the risk of loss and damage with respect to such Work until such additional Work is complete.

ARTICLE VII
WARRANTIES

7.1 Warranty Provisions.

7.1.1 Warranties.

(a) As the "Warranty," Company warrants to Owner that: (a) all Equipment and spare parts shall be new, good quality, unused and undamaged when installed; (b) all Equipment, spare parts and all Work and workmanship and installation services performed as part of the Work shall (i) be free from Defects, (ii) conform to the Specifications; and (iii) be suitable for Owner's use in the Project as a solar-powered electrical generation facility; (c) the services comprising the Work will be performed in accordance with the Specifications and with Company's best skill and judgment in a good and workmanlike manner; and (d) none of the Work and other services rendered by or through Company hereunder, or the use of the Work by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights.

7.1.2 Period for Warranties; Extensions. The Warranty shall commence on the Final Completion Date and shall continue for a period of two (2) years after the Final Completion Date (the "Warranty Period"). Notwithstanding anything to the contrary, if any component of the Work is repaired or replaced pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period and (b) one (1) year from the date of completion of the Warranty Services. On or prior to the Final Completion Date, any unexpired Manufacturer Warranties relating to the Work or the Equipment shall be assigned to Owner (and Company will promptly execute such documents as may be necessary to cause such assignment to occur).

7.1.3 Correction of Deficiencies. Upon any breach of any Warranty set forth in Section 7.1, Company shall cure such breach as promptly as practicable, pursuant to Section 7.2, upon being given written notice thereof ("Warranty Service"). Owner shall provide Company with reasonable access to the Project in order to perform Company's obligation under this Article VII, and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Company acknowledges that Owner shall have the right to operate and otherwise use the Equipment until such time as Owner deems prudent to suspend such operation or use in order to accommodate

Company's Warranty Services. If Equipment has been placed in service, Company shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Company; provided that, notwithstanding anything to the contrary, if Owner has delivered a notice pursuant to Section 7.2 within the Warranty Period, Company's obligation to perform the associated Warranty Work (if any) will be not be affected by the Warranty Period having lapsed before the Warranty Work could be performed and Company's obligation to perform the associated Warranty Work will continue until Company has completed such Warranty Service. Company shall bear all costs and expenses directly associated with the Warranty Services, including all costs of labor and equipment and of any necessary disassembly, removal, replacement, transportation, reassembly, reinstallation, and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, or any other obstruction as necessary to give access to the non-conforming item for correction, and for removal, repair and/or replacement of any damage to other work or property that arises from the breach of Warranty. Upon completion of Warranty Service, all Equipment shall be returned or restored to its proper condition (subject to normal wear and tear), including fit alignment, adjustment, operability and finish. If Company is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Company will undertake a technical analysis of the problem and correct the "root cause" unless Company can demonstrate to Owner's reasonable satisfaction that there is no material risk of the reoccurrence of such problem. No correction or cure shall be considered complete until Owner (and at Owner's election, Owner's Engineer or Owner's Project Manager) has reviewed and accepted such remedial work. So long as Company has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Company to provide Warranty Service to correct such noncompliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.

7.1.4 Conformance of Warranty Service to Warranty. Company warrants that all materials and services incorporated into the Work as part of any Warranty Service by Company or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service, shall conform to the requirements of this Agreement and the Warranty. Company shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.

7.2 Delay. Company shall perform the Warranty Service as promptly as reasonably possible after being notified of the noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than five (5) Days after such notice. If, after notification of a Defect or breach of Warranty, Company delays past such date in commencing, or fails to continue performing or completing, Warranty Service with respect to such Defect or breach of Warranty, Owner may correct, or cause to be corrected, such Defect or breach of Warranty so that the Work and Equipment comply with the Warranty after giving Company one (1) Business Day written notice, and Company shall be liable for all reasonable direct costs, charges and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices from Owner with reasonable supporting documentation from Owner. Such correction of a Defect or breach of Warranty shall be deemed to be Warranty

Service performed by Company and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

7.3 Manufacturer and Subcontractor Warranties. Company shall enforce all Manufacturer Warranties and the Surviving Subcontractor Warranties through the Warranty Period, notwithstanding the assignment of such warranties to Owner on the Final Completion Date. Notwithstanding anything to the contrary in this Section 7.3, Owner agrees that Company shall be permitted to act as agent for and receive the benefit of such Manufacturer Warranties and Surviving Subcontractor Warranties to the extent necessary to administer the Warranty obligations hereunder including performance of any related work under the Warranty.

Upon Substantial Completion of the Work, Company shall provide to Owner copies of, and assign to Owner, any and all Subcontractors' and sub-subcontractors' warranties on any materials, Equipment or Work supplied by Subcontractor or a sub-subcontractor hereunder or any of the Work performed hereunder. Company shall provide reasonable assistance to Owner without cost to Company in connection with the enforcement by Owner of any sub-subcontractor warranty after such assignment.

7.4 Proprietary Rights. Notwithstanding any provision herein to the contrary, if Owner or Company is prevented from completing the Work (or any part thereof) in accordance with this Agreement or if Owner is prevented from the use, operation, repair, maintenance, alteration, expansion (other than related to the foundations for expansion of the Project), rebuilding or enjoyment of the Project (or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Company's performance (or that of its Subcontractors) under this Agreement or any Intellectual Property Right or Company Deliverable transferred or licensed to Owner hereunder, Company shall promptly, but in no event later than fifteen (15) Days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) securing termination of the injunction and procuring for Owner, Owner's designee or any of their assigns, as applicable, the right to use such materials, Equipment or Company Deliverable in connection with the completion, repair, use, enjoyment, operation, maintenance, alteration, rebuilding or expansion (other than related to the foundations for expansion of the Project) of the Project without obligation or liability; or (b) replacing such materials, Equipment, or Company Deliverable with a non-infringing equivalent, or modifying same to become non-infringing, all at Company's sole expense, but subject to all the requirements of this Agreement.

7.5 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND COMPANY MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence does not disclaim any other obligations of Company set forth herein.

7.6 Survival of Warranties. The provisions of this Article VII shall survive the expiration or termination of this Agreement with respect to portions of the Work that have been completed prior to termination.

7.7 Limitations. The Warranty does not extend to (a) damage or Defect caused by Owner's failure to use and maintain any Equipment or the Work in compliance with the applicable Operating Manuals, (3) the use of parts by Owner in the repair or maintenance of any Equipment are not in compliance with the applicable Operating Manuals, or (4) any modification made to the Work by Owner or Other Owner Contractors not authorized by the terms of this Agreement (other than Company and Subcontractors); or (b) normal operating consumables or items that require replacement due to normal wear and tear or casualty loss (other than as a result of a failure under the Warranty). Notwithstanding any condition on or exclusion from the validity or effectiveness of the Warranty, in no event shall any such warranty condition, limitation, or exclusion apply to any Work or other action (or any failure to act where a duty or obligation to act is imposed by this Agreement) by Company (or any of its Personnel or Subcontractors or their Personnel), or to any action or failure to act by Owner (or any Other Owner Contractors) acting under the supervision or at the instruction of Company (or any of its Personnel or Subcontractors or their Personnel), including in material conformance or compliance with the Operating Manuals.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES

8.1 Company Representations. Company represents and warrants the following:

8.1.1 Organization. It is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and it is duly authorized and qualified to do business in the jurisdiction in which the Project is located and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform any of its obligations under this Agreement.

8.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Government Authority, which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement. There are no legal, administrative or arbitration proceedings, actions, controversies, investigations, or other similar proceedings now pending or (to the best knowledge of Company) threatened against Company that, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Company to perform any of its obligations under this Agreement and Company has not entered into any agreement with any Government Authority that would prohibit or hinder Company's performance under this Agreement. Company does not know of any basis for any such proceedings, controversies, actions or investigations.

8.1.3 Licenses. It is the holder of all governmental consents, licenses, permissions and other authorizations and Permits required to operate and conduct its business now and as contemplated by this Agreement.

8.1.4 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof conflicts with or will result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Company, any Applicable Laws, or any agreement, contract, indenture or other instrument to which Company is a party or by which it or its assets are bound or to which it or its assets are subject, or constitute a default under any such agreement or instrument.

8.1.5 Corporate Action. (a) It has all necessary power and authority to conduct its business, own its properties and execute, deliver and perform its obligations under this Agreement; (b) the execution, delivery and performance by Company of this Agreement have been duly authorized by all requisite limited liability company action; and (c) this Agreement has been duly and validly executed and delivered by Company and constitutes the legal, valid and binding obligation of Company enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

8.1.6 Experience. It has, by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including constructing the Project and installing the related Equipment.

8.1.7 Intellectual Property. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.

8.1.8 Solvency. It is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under this Agreement.

8.2 Owner Representations. Owner represents and warrants that:

8.2.1 Organization. It is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and it is duly authorized and qualified to do business in the jurisdiction in which the Project is located and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform any of its obligations under this Agreement.

8.2.2 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof conflicts with or will result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the limited liability company agreement of Owner, or any Applicable Laws, or any agreement, contract, indenture or other instrument to which Owner is a party or by which it or its assets are bound or to which it or its assets are subject, or constitute a default under any such agreement or instrument.

8.2.3 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite limited liability company action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

ARTICLE IX
FORCE MAJEURE; OWNER-CAUSED DELAYS

9.1 Force Majeure.

9.1.1 Notice. If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations under the Agreement, such Party shall give the other Party prompt written or electronic notice describing the alleged Force Majeure Event within two (2) Days following the date of such event (the "Force Majeure Notice"). The Force Majeure Notice shall be given to the other Party and its on-site manager or supervisor. Within five (5) Days after the Force Majeure Notice, the Party claiming a Force Majeure Event shall: (a) specify the length of the delay occasioned by, and the additional costs incurred by reason of, such Force Majeure Event; (b) describe the particulars of the cause and nature of the Force Majeure Event; (c) provide evidence of the occurrence of such Force Majeure Event; and (d) provide its plans for the remedy of the Force Majeure Event. At all times after the Force Majeure Notice, the affected Party shall continue to furnish weekly reports with respect thereto during the continuation of the Force Majeure Event notifying the other Party of (i) the steps which have been taken to remedy the Force Majeure Event and (ii) the expected remaining duration of its inability to perform hereunder.

9.1.2 Excuse of Non-Performance. So long as the conditions set forth in this Section 9.1.2 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to this Agreement to the extent that such failure has been caused by one or more Force Majeure Events or its effects; provided that in such event:

(a) any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

(b) the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

(c) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(d) when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Agreement.

9.1.3 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Section 9.1 shall be upon the Party claiming such Force Majeure Event.

9.2 Owner-Caused Delay.

9.2.1 Notice. Within seven (7) Days after the date that the event that Company believes is or may be an Owner-Caused Delay has occurred, Company shall give Owner written notice (a) providing evidence of the occurrence of such delay, (b) describing the particulars of the cause and nature of such delay, and (c) specifying the length of the delay occasioned by, and the additional costs incurred by reason of, such delay. Notwithstanding anything to the contrary in this Agreement, if Company fails to notify Owner of the occurrence of any Owner-Caused Delay within fourteen (14) Days after the date that the Owner-Caused Delay occurred, Company will be deemed to have waived any rights or remedies it may have with respect to such Owner Caused Delay.

9.2.2 Excuse of Non-Performance. So long as the requirements and conditions set forth in this Section 9.2 are satisfied, Company shall not be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Key Milestone to the extent that such failure has been solely caused by one or more Owner-Caused Delays, provided that: (a) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; and (b) Company provides all assistance reasonably requested by Owner, at Owner's cost, for the elimination or mitigation of the Owner-Caused Delay.

9.2.3 Nature of Owner-Caused Delay. Without limiting the definition of Owner-Caused Delays, but notwithstanding anything else in this Agreement to the contrary, in any case where this Agreement states that Owner "shall cause" the Other Owner Contractors to take or not to take a certain action, the Parties agree that if Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Company's sole and exclusive remedies as a result thereof will be as set forth in this Section 9.2 and Section 10.5.1(b).

9.2.4 Failure to Meet Notice to Proceed Deadline. Notwithstanding anything herein to the contrary, to the extent that Owner fails to issue the Notice to Proceed on or before the Notice to Proceed Deadline such failure shall be deemed (a) an Owner-Caused Delay whether or not Company has delivered any required notice hereunder and as a

result (b) the Project Schedule shall be extended on a day for day basis in an amount equal to the number of days from the Notice to Proceed Deadline to the date upon which the Notice to Proceed is finally issued.

ARTICLE X
CHANGES

10.1 Changes. There shall be no change to the Work, the Contract Price or the Project Schedule except to the extent provided in a written Change Order signed by Owner and Company stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and/or (c) the extent of the adjustment in the Project Schedule, if any (any of the foregoing, a "Change"). Company acknowledges and agrees that Owner may be required to disclose any information in connection with a Change Order proposed under this Agreement to Owner's Engineer.

10.2 Changes at Owner's Request.

10.2.1 Owner may, from time to time, without invalidating this Agreement, order or approve by notification in writing (a "Change Order Request") to Company (a) Changes in all or a portion of the Work, including any of the changes to the Work set forth in Exhibit K-3 ("Predetermined Change Items") and/or (b) acceleration of the Work to recover from delays caused by a Force Majeure Event, an Owner-Caused Delay or suspension of the Work by Owner in accordance with Section 13.7. Company shall reasonably review and consider any request from Owner for such a Change and shall make a written response thereto within seven (7) Days after receiving such request. If Company believes that giving effect to any Change so requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, or require a modification of any other provisions of this Agreement, its response to the Change Order Request shall set forth such Changes (including any amendments to this Agreement) that Company deems necessary as a result of the requested Change and its justification therefor. If Owner accepts the Changes requested by Company to implement the Change Order Request (together with any amendments to this Agreement specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to this Agreement, if any, in a Change Order. Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order, Company shall, at Owner's discretion, proceed with such Work, and such matter shall be referred to the Change Order Dispute Engineer mutually selected by both parties for full and final resolution of the matter within ten (10) Business Days from the applicable date of referral. Each Party shall pay fifty percent (50%) of the fees and expenses of the Change Order Dispute Engineer; provided that if the Change Order Dispute Engineer resolves the dispute completely in favor of one of the Parties without deviation from that Party's position, then that Party shall not be required to pay any fees or expenses of the Change Order Dispute Engineer and the other Party shall pay one hundred percent (100%) of the fees and expenses of the Change Order Dispute Engineer with respect to that particular dispute (including reimbursement to the prevailing party of any such fees and expenses

previously paid by the prevailing party). If Company fails to respond to Owner's Change Order Request within fourteen (14) Days after receiving such request, Company will be deemed to have agreed to such Change Order Request with no adjustment to the Contract Price or the Project Schedule.

10.2.2 Notwithstanding the provisions of Section 10.2.1, if Owner issues a Change Order Request for a Predetermined Change Item, Company shall execute a Change Order with Owner agreeing to reduce the Contract Price in the amounts for such Predetermined Change Item set forth in Exhibit K-3.

10.3 No Unapproved Changes. Company shall not perform any Changes to the Work until Owner has approved in writing the proposed adjustments. If Owner does not approve the proposed adjustments and Company and Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Company cancel the Change. Upon receiving from Owner a written approval or written authorization to perform, Company shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement. Company shall not suspend, in whole or in part, performance of this Agreement during any dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Company shall (without waiving any rights with respect to such Change or disputed item) do so. Once a dispute over a Change Order has been resolved, the Parties shall adjust the Contract Price and Project Schedule pursuant to such resolution. Following such resolution, Owner may offset against payment of the Contract Price pursuant to Section 5.10 any amounts paid to Company for any additional Work pursuant to the last sentence of Section 10.2.1 in excess of the amount due to Company for such additional Work in accordance to the resolution of the dispute.

10.4 Changes Initiated by Company. Company will issue to Owner a Change Order Request within seven (7) Days after Company becomes aware of or should have become aware of any circumstances which Company has reason to believe may necessitate a Change. Owner shall respond to such Change Order Request within a reasonable time, not to exceed ten (10) days, after receipt thereof. All Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact that the Change is likely to have on the Contract Price; (c) the impact that the Change is likely to have on the timely achievement of the activities set forth in the Project Schedule (including the Guaranteed Completion Dates); and (d) such other information which Owner may request in connection with such Change. Except as provided in Section 10.5, Owner shall not be obligated to issue a Change Order pursuant to a Change Order Request. Notwithstanding anything to the contrary in this Agreement, if Company fails to issue a Change Order Request within fourteen (14) Days after Company becomes aware of or should have become aware of any circumstances which Company has reason to believe may necessitate a Change, Company will be deemed to have waived its right to any such Change Order Request.

10.5 Required Change Orders.

10.5.1 Company Right to Change Orders. Provided that Company has used all reasonable efforts to avoid and mitigate any potential delays to the Project Schedule and/or increased Direct Costs or indirect costs resulting from such events, including seeking recovery under Company's insurance policies covering damage to tools and equipment, if

applicable, Company will, to the extent described in Sections 10.5.2 and 10.5.3, be entitled to receive Change Orders to the extent necessary to overcome any events described in this Section 10.5.1. If the Parties do not agree upon all that Company is entitled to receive a requested Change Order, Company shall, at Owner's discretion, proceed with such Work, and such matter shall be referred to the Change Order Dispute Engineer mutually selected by both parties for full and final resolution of the matter within ten (10) Business Days from the applicable date of referral. Each Party shall pay fifty percent (50%) of the fees and expenses of the Change Order Dispute Engineer; provided that if the Change Order Dispute Engineer resolves the dispute completely in favor of one of the Parties without deviation from that Party's position, then that Party shall not be required to pay any fees or expenses of the Change Order Dispute Engineer and the other Party shall pay one hundred percent (100%) of the fees and expenses of the Change Order Dispute Engineer with respect to that particular dispute (including reimbursement to the prevailing party of any such fees and expenses previously paid by the prevailing party).

(a) Change Order Due to Force Majeure Event. Subject to this Section 10.5.1 and Section 9.1 and Company meeting the requirements therein, (i) if and to the extent that a Force Majeure Event causes Company to suffer a delay in its performance of the Work, Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 10.5.2, and (ii) if and to the extent that such Force Majeure Event increases Company's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 10.5.3; *provided* that in no event will any Force Majeure Event arising out of or connected to the COVID-19 pandemic, including any variants related to or arising from the COVID-19 virus, result in a change to the Contract Price.

(b) Change Order Due to Owner-Caused Delay. Subject to this Section 10.5.1 and Section 9.2 and Company meeting the requirements therein, (i) if and to the extent that an Owner-Caused Delay causes Company to suffer a delay in its performance of the Work, Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 10.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Company's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 10.5.3.

(c) Change Order Due to Project Site Approval. Subject to this Section 10.5.1 and Section 2.12.1, if an alternate Project Site is selected pursuant to Section 2.12.1 and such selection causes Company to suffer a Delay in its performance of the Work, Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 10.5.2; *provided* that in no event will selection of an alternate Project Site pursuant to Section 2.12.1 result in a change to the Contract Price.

(d) Change Order Due to Unforeseen Site Condition. Subject to this Section 10.5.1 and Section 2.12.4, including the notice requirement therein, if and to the extent that an Unforeseen Site Condition causes Company to suffer a Delay in its performance of the Work, Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 10.5.2; *provided* that in no event will any Unforeseen Site Condition result in a change to the Contract Price.

(e) Change Order Due to Pre-Existing Hazardous Material. Subject to this Section 10.5.1, if and to the extent that (i) Company has provided Owner with all Project Site Diligence Materials as required by Section 2.12.1, (ii) Company discovers any Pre-Existing Hazardous Material that has been stored, Released or disposed on, at, or from the Project Site, (iii) Company is not responsible for the remediation of such Pre-Existing Hazardous Material pursuant to Section 2.15.2(b)(i), and (iv) Company stops performance of the Work in that area and takes all necessary and desirable actions to clean up and remediate fully such Pre-Existing Hazardous Material to the reasonable satisfaction of Owner, as required under Section 2.15.2(c), then, once the Work is re-commenced, Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 10.5.2 and Section 10.5.3; *provided* that, notwithstanding anything to the contrary herein, any change to the Contract Price for a Change Order issued pursuant to this 10.5.1(e) and Section 10.5.3 will be for 50% of the Direct Costs associated with the remediation of such Pre-Existing Hazardous Materials. Notwithstanding the foregoing, Owner shall not be required to issue any Change Order to the extent that the actions or inaction of Company relating to the storage, Release or disposal of such Hazardous Material results in an obligation of Company to indemnify Owner pursuant to Article XII hereunder.

10.5.2 Changes Involving Schedule Extensions. To the extent that Company reasonably demonstrates that an event necessitating a Change as described in Section 10.5.1 will delay Company in performing the applicable Work by a Guaranteed Completion Date despite Company's use of reasonable efforts to mitigate and avoid any such delay, Owner shall issue a Change Order extending the Project Schedule on an equitable basis as determined by the facts and circumstances surrounding such event and the effect on timing of the Work, including the time of year, the stage of the Work and the duration of the event, to enable Company to remedy the effect on Company's ability to perform the Work including achievement of the applicable Key Milestone(s) demonstrated by Company as being required solely as a result of the event (or combination of events) as described in Section 10.5.1 necessitating the Change. Company's demonstration of the impact on the progress of the Work must be made on a basis that analyzes the actual impacts of the given event on the then-current schedule for completion of the Work. In no event will Company be entitled to an extension of time under this Section 10.5.2 to the extent that the performance of the Work for which the extension is sought would have been suspended, delayed or interrupted by the concurrent fault, actions or omissions of Company or Subcontractors.

10.5.3 Changes to the Contract Price.

(a) Except as set forth in Section 10.5.3(b), unless the Parties agree otherwise in writing, any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 10.5.1 will increase the Contract Price by an amount equal to the Direct Costs incurred by Company solely in connection with such event. Notwithstanding the foregoing, if Owner submits a Change Order Request pursuant to Section 10.2.1, the Contract Price adjustment, if any, shall be limited to the amount determined in accordance with Section 10.2.1 and shall not include any additional amounts for Company's Direct Costs.

(b) In no event will Company be entitled to payment for any costs hereunder, including any Direct Costs, to the extent that such costs would have occurred, notwithstanding such event, due to the concurrent fault, actions or omissions of Company or its Subcontractors.

(c) For purposes hereof, "Direct Costs" shall mean only the actual and reasonable out-of-pocket costs that are directly incurred by Company, and supported by documentation reasonably evidencing the amount and incurrence of such costs, as a result of the event giving rise to the Change Order for the following items: (i) compensation for Labor and Equipment utilized and in the direct employ of Company at the Project Site, at the rates as set forth in Company's Rate Schedule; (ii) cost of materials and permanent equipment; (iii) payments properly made by Company to Subcontractors, service providers, consultants, and suppliers; (iv) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (v) Permit fees; and (vi) reasonable costs of mobilization and/or demobilization if the delay related to the event justifying the Change Order exceeds ten (10) continuous Days. Notwithstanding the foregoing, "Direct Costs" shall not include (A) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Company's Personnel at Company's principal office and branch offices (except as provided in the previous sentence); (B) expenses of Company's principal and branch offices; (C) Company's profit, overhead or general expenses of any kind; (D) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Company or its Subcontractors; (E) costs to correct or reperform any components of such Work as a result of the acts or omissions of Company or its Personnel; (F) any fines or penalties assessed against Company or its Personnel in connection with such Work that were assessed due to the fault of Company or its Personnel; (G) any costs or expenses other than those specifically set forth above as Direct Costs; or (H) any amounts paid to Affiliates of Company that exceed the fair market value for their services or materials. In the event that Owner believes that any cost is improperly included in the calculation of Direct Costs or that any cost included in the Direct Costs has been incorrectly determined, Owner may inform Company that it elects to submit such dispute to the Change Order Dispute Engineer for full and final resolution of the matter within five (5) Business Days from the applicable date of referral. Each Party shall pay fifty percent (50%) of the fees and expenses of the Change Order Dispute Engineer.

10.6 Taxes. The Parties acknowledge that the provisions of Section 5.7 will apply to any additional Work covered by any Change Order.

ARTICLE XI
INSURANCE

From the date of issuance of an LNTP or the Notice to Proceed (whichever earlier) through and including the Final Completion Date, except as otherwise specified, Company shall at its own expense procure and maintain, or cause to be procured and maintained, (a) the insurance coverages set forth in Exhibit N and (b) the insurance coverages required under the other Project Documents, in each case with one or more duly licensed insurance company(ies) meeting the requirements for the insurance provider thereunder and at a minimum rated A- VII

or better, by Best's Insurance Guide and Key Ratings, (or, if Best's Insurance Guide and Key Ratings is no longer published, an equivalent rating by another nationally recognized insurance rating agency of similar standing) or other insurance companies of recognized responsibility. Nothing in this Article XI or in Exhibit N shall be construed as limiting the extent of Company's responsibility under Article XII or otherwise.

If at any time the insurance to be provided by Company hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the Owner hereunder in respect of any default that arises as a result of such failure), the Owner may if such default continues after ten (10) Business Days' notice to Company, at its option maintain the insurance required hereby, and, in such event, Owner may withhold the cost of insurance premiums from any payments to Company.

Company shall require such liability and workers' compensation/employer's liability insurance of its Subcontractors who perform services at the Project as shall be reasonable and in accordance with Prudent Solar Industry Practices in relation to the Work or other items being provided by each such Subcontractor. Company remains fully responsible for all of its consultants and Subcontractor's work, actions and performance of duties while on the Project Site, except as expressly provided otherwise in this Agreement.

ARTICLE XII
INDEMNIFICATION

12.1 Indemnities.

12.1.1 Company's General Indemnity. Company shall release, defend, indemnify and hold harmless Owner and its subsidiaries and Affiliates, directors, officers, agents, employees, successors and assigns, and the owners of the real property comprising the Project Site (each of the foregoing, an "Owner Indemnified Party") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, fines, penalties, assessments, interest, causes of action, and expenses, including reasonable attorney's fees (collectively, "Losses"), asserted against any Owner Indemnified Party to the extent and as a result of any and all of the following:

(a) any third party suits, actions, losses, damages, injuries, liabilities, claims, demands, penalties, assessments, interests and causes of action, expenses (including reasonable attorney's fees, of any character, type or description, including all reasonable expenses of litigation, court costs, and attorneys' fees), for (i) bodily injury or death to any person, including employees of Company; or (ii) damage to any property, in each case to the extent (1) caused by the negligent acts or omissions of Company, its Subcontractors, agents or employees, which act or omissions arises out of or is connected with this Agreement, the Work or the transactions contemplated by this Agreement, but not to the extent caused by the negligent acts or omissions of Owner, its agents, employees or representatives, including but not limited to the Owner's Engineer or Other Owner Contractors or (2) related to any access to the Project Site by DOE personnel or by any other Persons to the extent related to or arising in connection with any agreement between Company and DOE regardless of fault;

(b) any claims by any Government Authority for any of Company's income Taxes or any other Taxes for which Company is responsible pursuant to Section 5.7;

(c) any pollution or contamination or any Release that may originate from sources in Company's or its Subcontractors' or any of their Personnel's possession, use and control or caused by the negligence of Company, a Subcontractor or any of their Personnel, or anyone for whose acts such Person may be liable (including as a result of the negligent Release of Pre-Existing Hazardous Material, the negligent exacerbation of Pre-Existing Hazardous Material or the negligent removal or remediation of Pre-Existing Hazardous Material), including from Hazardous Material, industrial hazards, bilge, garbage, or the disposal at any location of any of the foregoing;

(d) any Lien to the extent Owner has paid all amounts due hereunder as part of the Contract Price relating to the Work that is the subject of such Lien, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Company or any Subcontractor or other Person providing Labor or materials in connection with the Work;

(e) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Company's performance (or that of its Affiliates, a Subcontractor, and/or any of their Personnel) under this Agreement, (ii) the design, construction, use, operation or ownership of the Project (including the Equipment, Company Deliverables or any portion of any of them), or (iii) the use of any license granted hereunder. Without limiting the provisions of Section 7.4, if Owner is enjoined from completing the Project or any part thereof, or if Owner is enjoined from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Company shall, in addition to its indemnification obligations hereunder, promptly use commercially reasonable efforts to have such injunction removed at no cost to Owner. Company shall timely notify Owner in writing of any claims which Company may receive alleging infringement of patents or other proprietary rights that may affect Company's performance of the Work;

(f) any cancellation or invalidation of any insurance policy or part thereof procured under Article XI as a result of Company's failure to comply with any of the requirements set forth in such policy or any other act by Company or any Subcontractor (but only to the extent that Company has actually received the terms of such insurance policy); or

(g) any claims with respect to employer's liability or worker's compensation filed by any employee of Company or any of its Subcontractors, except to the extent caused by the negligent acts or omissions of Owner or Other Owner Contractors.

12.1.2 Owner's Indemnity. Owner shall release, defend, indemnify and hold harmless Company and its Affiliates, and each of their respective directors, officers, agents, employees, successors and assigns (each of the foregoing, an "Company

Indemnified Parties") from and against any and all Losses incurred by or asserted against any such Person to the extent and as a result of any and all of the following:

(a) any claims for injury or death of any Person, including employees of Owner, Company or any Person employed by any of them for whose acts any of them may be liable, but only to the extent caused by Owner's negligent acts or omissions;

(b) any loss of or damage to property, but only to the extent caused by Owner's negligent acts or omissions;

(c) any claims by any Government Authority for any of Owner's income Taxes or any other Taxes for which Owner is responsible pursuant to Section 5.7;

(d) any Release of a Hazardous Material brought to the Project Site by Owner or Other Owner Contractors, except to the extent Company has an indemnification obligation with respect thereto pursuant to Section 12.1.1;

(e) any cancellation or invalidation of any insurance policy or part thereof procured under Article XI as a result of Owner's failure to comply with any of the requirements set forth in such policy or any other act by Owner, but only to the extent such insurance policy and the terms thereof have actually been received by Owner; or

(f) any claims with respect to employer's liability or worker's compensation filed by any employee of Owner or Other Owner Contractors, but only to the extent caused by the acts or omissions of Owner.

12.2 Indemnification Procedure.

12.2.1 Notice of Proceedings. The Person claiming to be indemnified under the terms of this Article XII (the "Indemnified Person") shall give the Party from which indemnification is sought (the "Indemnifying Party") written notice of commencement of any legal action or of any claims against such Indemnified Person in respect of which indemnification will be sought, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article XII.

12.2.2 Conduct of Proceedings. Each Party and each other Indemnified Person shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof (including reasonable attorneys' fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying

Party shall conduct with due diligence and in good faith the defense of any claim against such Indemnified Person, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Person may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim, (b) the Indemnifying Party did not employ counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person reasonably concludes and specifically notifies the Indemnifying Party that there may be specific defenses available to it that are different from or additional to those available to the Indemnifying Party. In each such case, the Indemnifying Party shall not have the right to control the defense or settlement of such claim and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party. The amount of any indemnity payment made under Section 12.1 shall be reduced by the amount of all insurance proceeds received by the Indemnified Person in respect of the event giving rise to the right of indemnity under Section 12.1.

12.2.3 Contributory Negligence. If the joint, concurring, comparative or contributory fault or negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article XII, then such damages shall be allocated between the Parties in proportion to their respective degrees of fault or negligence contributing to such damages.

12.2.4 Survival of Indemnities. The indemnities set forth in this Article XII shall survive the termination or expiration of this Agreement.

ARTICLE XIII
DEFAULT, TERMINATION AND SUSPENSION

13.1 Company Default.

13.1.1 Company Events of Default. The occurrence of any one or more of the following events shall constitute an event of default by Company hereunder ("Company Event of Default"):

(a) any of the following occurs: (i) Company consents to the appointment of, or taking possession by, a receiver, trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Company files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent under

the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Company's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order, and such order remains in effect for more than thirty (30) Days; or (iv) Company is adjudged bankrupt or insolvent, has any property sequestered by court order, and such order remains in effect for more than thirty (30) Days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within sixty (60) Days of such filing;

(b) Company fails, for any reason, to make any other payment or payments required to be made to Owner under this Agreement within thirty (30) Days after receipt of written notice from Owner of Company's failure to make such other payment or payments (except to the extent Company disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(c) Company fails to comply with any material provision of any Applicable Laws or Applicable Permits, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner, provided, if such failure to comply is not capable of being cured within ten (10) Business Days, Company shall not be in default so long as Company commences to cure within ten (10) Business Days and thereafter diligently proceeds to cure such breach in a manner reasonably satisfactory to Owner and such cure is complete not later than sixty (60) Days after Owner's notice;

(d) any of the following occurs: (i) Company fails to make payments when due to Subcontractors for Labor, materials or Equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Company and any Liens relating to such disputed payments are satisfied or bonded off by Company or unless Owner has failed to make the corresponding payments required by this Agreement; or (ii) Company suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Project Schedule (other than as permitted under Article IX or pursuant to a Change Order); and in each instance as described in each of sub-clauses (i) and (ii) of this Section 13.1.1(d), the impacts of such condition remain unremedied for ten (10) Business Days following written notice thereof to Company;

(e) any material breach by Company of any representation or warranty contained in Article VIII, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice thereof to Company;

(f) Company fails to: (i) provide a written recovery plan as required in Section 3.1.3; or (ii) implement the recovery plan in a diligent and timely manner, and such failure has not been cured within five (5) Business Days following written notice thereof to Company;

(g) Company fails to achieve any Key Milestones within ninety (90) Days of the applicable deadline set forth in the Project Schedule;

(h) Company fails to achieve Final Completion for more than ninety (90) Days past the Guaranteed Final Completion Date;

(i) the dissolution of Company, except for the purpose of merger, consolidation or reorganization where (i) the successor expressly assumes Company's obligations hereunder; (ii) such successor demonstrates, within ten (10) Business Days of the dissolution of Company to Owner's reasonable satisfaction, that it is willing and able to fully perform Company's obligations hereunder, (iii) such assumption of the obligations of Company does not materially, adversely affect Owner's rights under this Agreement or the ability of the successor to perform Company's obligations under this Agreement; and (iv) such successor provides all information and materials reasonably requested by Owner to demonstrate no such material adverse effect described in clause (iii) will occur.

(j) the transfer or assignment by Company of (i) this Agreement or any of the rights and/or obligations of Company hereunder, except for an assignment that is expressly permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Company, except where the transferee is an Affiliate of Company and, within ten (10) Business Days of the transfer, expressly assumes the transferred obligations and such transfer does not materially, adversely affect the ability of Company or the transferee, as applicable, to perform its obligations under this Agreement;

(k) any failure by Company to maintain the insurance coverages required of it in accordance with Article XI, the impacts of which have not been cured to Owner's reasonable satisfaction within thirty (30) Business Days after notice from Owner; and

(l) Company is in breach of any provision of this Agreement or has failed to perform its obligations under this Agreement (other than those breaches specified in Section 13.1.1(a) through (k)) and (i) such breach is not cured by Company within thirty (30) Days following notice thereof to Company, or (ii) if such breach is not capable of being cured within such thirty (30) Day period, Company (A) fails to commence to cure such breach within such thirty (30) Day period or (B) fails to thereafter diligently proceed to cure such breach in a manner reasonably satisfactory to Owner in its sole discretion or (C) fails to cure such breach in sixty (60) Days after Owner's notice is delivered to Company.

13.1.2 Owner Termination for Cause. Upon the occurrence and during the continuation of any Company Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Company (an "Owner Termination for Cause"). An Owner Termination for Cause shall be effective upon delivery of Owner's notice with respect thereto. In the event of any termination of the Agreement pursuant to this Section 13.1.2, Owner may, without prejudice to any other right or remedy it may have, at its option, finish the Work

by whatever methods Owner may deem expedient that are consistent with Prudent Solar Industry Practices, including contracting with any other Person to complete the Work, and may undertake such expenditures as in Owner's reasonable judgment will best accomplish the timely completion of the Work (including, where necessary, the entry into contract without prior solicitation of proposals). Without prejudice to the foregoing, Owner shall use reasonable efforts to mitigate the cost for completion of the Work. In such event Company shall not be entitled to receive any further payments under this Agreement except for payments for Work performed prior to such termination. As soon as practicable after final completion of the Work, Owner shall determine the Completion Cost. If the Completion Cost exceeds the unpaid portion of the Contract Price at the time of the termination of this Agreement, then Company shall pay to Owner the amount of such excess, within ten (10) days following receipt of Owner's demand for such payment. Under such circumstances, Owner shall not be required to pay additional amounts to Company. However, if the Completion Cost is less than any remaining portion of the Contract Price due and owing to Company at the time of the termination of this Agreement, then no amount shall be due to Owner or Company except to the extent provided in the last sentence of this Section 13.1.2. "Completion Cost" means (a) all direct costs and expenses incurred by Owner to complete the Work including without limitation (i) costs to engage one or more substitute contractors to complete (or cure deficiencies in) the Work (ii) all overhead, legal, consultant, engineering, testing, and other professional fees and expenses, and (iii) all amounts under any of Company's Subcontract(s) or other contractual agreement(s) that Owner elects to assume or have assigned to a replacement contractor and (b) all other direct costs, expenses and damages suffered by Owner as a result of the Company Event of Default and the Owner Termination for Cause including any termination and cancellation charges Owner is assessed by third parties resulting from Owner's termination of Company. Any amount owed by Owner to Company for Work that was completed prior to termination shall be retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Company pursuant to this Section 13.1.2 or otherwise. Subject to the terms of this Agreement, any excess of the amount retained over the amount due to Owner under this Section 13.1.2 shall be remitted to Company within sixty (60) Days after the Final Completion Date.

13.1.3 Other Owner Remedies. Upon the occurrence and during the continuance of a Company Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) suspend performance of its obligations and duties hereunder upon written notice to the Company, (b) seek equitable relief to cause Company to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (c) make such payments or perform such obligations as are required to cure such Company Event of Default, and/or offset the cost of such payment or performance against payments otherwise due to Company under this Agreement.

13.2 Owner Default. Owner's failure to pay to Company any required payment that is not in dispute when due, which failure continues for thirty (30) Days after written notice of such failure has been received by Owner from Company, shall constitute an event of default by Owner hereunder (an "Owner Event of Default"). Upon any Owner Event of Default, Company may suspend the Work. Company may terminate this Agreement thirty (30) Days after any Owner

Event of Default and after giving written notice thereof to Owner so long as the amount owed by Owner (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such thirty (30)-day period (a "Company Termination for Cause"). In the event of a Company Termination for Cause, Company shall be entitled to recover an amount equal to the Termination Payment pursuant to Section 13.3. Unless Company terminates this Agreement pursuant to the foregoing provisions, Company shall not suspend or delay performance of the Work because of any Owner Event of Default. Company shall continue performance of the Work during any dispute over payment so long as Owner continues to pay all undisputed amounts. Other than as stated above, Company will have no right to terminate this Agreement, and Company acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than nonpayment as described above) are limited to receipt of a Change Order as described in Section 10.5.

13.3 Termination Payment.

13.3.1 Termination Payments Due to Company. Upon a termination of this Agreement pursuant to Section 13.2 or Section 13.4 and subject to Owner's rights under Sections 5.3 and 5.7, Company shall be entitled to a payment (the "Termination Payment"), which shall equal the sum of the following, without duplication: (a) that portion of the Contract Price that is applicable to Work performed in accordance with the terms of this Agreement up to the date of termination that has not previously been paid to Company (as determined below); (b) the expenses reasonably incurred by Company in withdrawing Company's Equipment and Personnel from the Project Site and in otherwise demobilizing; (c) all direct costs reasonably incurred by Company in connection with such termination, including cancellation and deferment charges and material procurement costs; (d) the expenses reasonably incurred by Company in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Company), except to the extent Owner has instructed Company not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner's assumption of same and, if required pursuant to the applicable Subcontract, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay; (e) the cost for any Work performed after the notice of termination that is specifically authorized by Owner. Company shall use all reasonable, diligent efforts to mitigate the foregoing costs, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement. Notwithstanding anything to the contrary, the Termination Payment shall not include any costs incurred by Company after the date of the event giving rise to such termination that Company reasonably could have mitigated.

13.3.2 Payment of Termination Payment. Company shall submit an invoice to Owner for the Termination Payment with supporting information and documentation of any fees or expenses claimed by Company pursuant to this Section 13.3. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) Days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) Day period. As a condition precedent to receiving any Termination Payment, Company shall comply with Section 13.5 in its entirety.

13.3.3 Company's Sole Remedy. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Company, with respect to termination of this Agreement under Section 13.2 or Section 13.4, and in such event, Owner shall have no further liability to Company notwithstanding the actual amount of damages that Company may have sustained, or any loss of anticipated profits for unperformed Work, in connection with such termination. Company waives any claims for damages, including loss of anticipated profits for uncompleted Work due to a termination by Owner pursuant to Section 13.2 or 13.4 and shall accept as its sole remedy the Termination Payment.

13.4 Owner Termination Without Cause. Owner may, for its convenience, terminate this Agreement after giving notice to Company in which event Company shall be entitled to be paid the Termination Payment under Section 13.3. As a condition to any termination by Owner pursuant to this Section 13.4 (an "Owner Termination Without Cause"), Owner must provide written notice to Company of the Owner Termination Without Cause at least three (3) Business Days prior to the effective date of such termination. If, at the date of termination under this Section 13.4, Company has properly performed services or purchased, prepared or fabricated off the Project Site any materials or Equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or Equipment delivered to the Project Site or to such other place as Owner shall reasonably direct.

13.5 Actions Required Following Termination.

13.5.1 Discontinuation of Work. Upon termination of this Agreement, Owner shall be immediately released from any and all obligations to Company (except for Owner's obligation to pay any amount specified in Section 13.3, if applicable), Company immediately shall discontinue the Work and remove from the Project Site its Personnel, all Company's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Company or its Subcontractors or for which Company is otherwise responsible, and Owner shall be entitled to take exclusive possession of the Work, the Project Site, and any and all Equipment (including materials delivered or en route to the Project Site). Company immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, Equipment and supplies at the Project Site, stored off-site, or in transit.

13.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner in the event of termination of this Agreement, Company will make every reasonable effort to cancel existing Subcontracts upon terms satisfactory to Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Company (subject to Section 13.3, in the event of a termination under Section 13.2 or 13.4). Company shall also, upon request by Owner in the event of termination of this Agreement by Owner, to the extent assignable, (a) irrevocably assign and deliver to Owner any and all Permits held by Company (and Permit applications in Company's name) and all Subcontracts, purchase orders, bonds, warranties and options made by Company in performance of the Work (but in no event shall Owner be liable for any action or default of Company occurring prior to such delivery and assignment), (b) provide to Owner without charge a license to use all rights to patented, copyrighted, licensed or proprietary materials of Company and Subcontractors in connection with the

Work, except as otherwise restricted herein, and (c) deliver to Owner originals of this Agreement, originals of all Drawings, to the extent available, Company Deliverables in process (except that Company may keep for its records copies, and, if sufficient originals exist, an original set, of this Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, Lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Company after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Company provided by Applicable Laws, this Agreement or otherwise upon such termination. In addition, Company shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Project Site, and Company shall take such other action as required hereunder upon termination of this Agreement.

13.6 Surviving Obligations. Termination or expiration of this Agreement (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in Section 16.4, (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof, (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Owner or Company of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and (d) shall not relieve Company of its obligations as to portions of the Work or other services hereunder already performed or of obligations assumed by Company prior to the date of termination, including with respect to Company's Warranty obligations with respect to such portions of the Work following Final Completion of the Project, whether by Owner or a third party. This Article XIII shall survive the termination or expiration of this Agreement.

13.7 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Company. Such suspension shall continue for the period specified in the notice of suspension; provided that Company agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension from Owner, unless the notice requires otherwise, Company shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or Subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, Subcontracts and rental agreements to the extent they relate to performance of suspended Work; (d) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Company shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all Subcontracts. After the conclusion of any suspension hereunder, Company will be entitled to a Change Order to the extent described in Section 10.5.1(b). If a suspension of Work continues for more than one hundred ninety (190) Days in the aggregate, Company may deliver to Owner a notice of intent to terminate and, unless within fifteen (15) days of receiving such notice Owner has notified

Company that it may resume the Work, terminate this Agreement, which termination shall be deemed an Owner Termination Without Cause.

13.8 Stop Work Directive. Without limiting the generality of Owner's right under Section 13.7, Owner may issue a stop work directive ("SWD") in any situation where: (a) Company or any Subcontractor is performing Work materially contrary to the conditions and terms of this Agreement; (b) continued Work could cause damage to, or render remedial action ineffective for, any product form/service provided by Company or Subcontractors; or (c) there exists a safety issue that is an imminent threat to Person(s) or property. The SWD shall be limited to stopping Work to the extent reasonably necessary to remedy or prevent the circumstance giving rise to the SWD from becoming worse or threatening Persons or property. Owner shall permit Company to continue Work as needed to remedy the circumstance giving rise to the SWD and to continue Work not creating or exacerbating the circumstances giving rise to the SWD. Upon receipt of a SWD, Company and all Subcontractors shall cease operations on any specified product or service to the extent stipulated by the SWD and subject to this Section 13.8. Company and the Subcontractors shall not resume Work on an activity described in a SWD until Company has obtained an authorization from Owner (which shall not be unreasonably withheld, conditioned, or delayed), and any delay in the performance of the Work shall not adjust the Project Schedule or Contract Price, unless Company is otherwise entitled to a Change Order for the delay pursuant to another provision of this Agreement or it is determined pursuant to Article XV that Owner's determination under this Section 13.8 was in error.

ARTICLE XIV
LIMITATION OF LIABILITY

14.1 Consequential Damages. Except with respect to (a) fraud or willful misconduct, (b) the indemnification obligations of the Parties pursuant to Article XII in the event of third party indemnification claims under this Agreement and (c) any breach of the confidentiality, title, insurance or intellectual property infringement requirements set forth in Section 16.4, Article VI, Article XI, or Sections 2.23 or 7.4, respectively, in no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of power, production, actual or anticipated profits, revenues or product; increased expense of borrowing or financing; claims of Owner's customers; and increased cost of capital) (collectively, "Consequential Damages") arising out of this Agreement; and, regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory.

14.2 Limitation of Liability.

14.2.1 Notwithstanding anything to the contrary contained in this Agreement, in no event shall Company be liable to Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of an amount equal to one hundred percent (100%) of the Contract Price, as adjusted for Change Orders, regardless of whether such liability arises out of breach of contract, tort, product liability,

contribution, strict liability, negligence or any other legal or equitable theory; provided, however, that the preceding limitation of liability shall not apply to, and no liability amounts shall apply against such limitation of liability for, (a) liabilities resulting from the gross negligence, fraud, willful misconduct or illegal or unlawful acts of Company or its Personnel (including their Labor), (b) liabilities arising out of Company's obligations to indemnify Owner or other indemnitees for third party claims under this Agreement by parties not under contract with the party seeking indemnity, (c) costs incurred by Company (and, in the event Company fails to perform, Owner) in performing Warranty Service, (d) any taxes payable by Company pursuant to Section 5.7, (e) damages for risks required to be insured by Company under this Agreement, or (f) costs incurred by Company (and in the event of Company Event of Default, Owner) in achieving Substantial Completion.

14.2.2 Notwithstanding anything to the contrary contained in this Agreement, in no event shall Owner be liable to Company for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of an amount equal to (i) one hundred percent (100%) of the Contract Price, as adjusted for Change Orders, minus (ii) any amounts paid by Owner to Company pursuant to Section 5.2, regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability, negligence or any other legal or equitable theory; provided, however, that the preceding limitation of liability shall not apply to, and no liability amounts shall apply against such limitation of liability for, (a) liabilities resulting from the gross negligence, fraud, willful misconduct or illegal or unlawful acts of Owner or its Personnel (including their Labor), (b) liabilities arising out of Owner's obligations to indemnify Company or other indemnitees for third party claims under this Agreement by parties not under contract with the party seeking indemnity, and (c) any taxes payable by Owner pursuant to Section 5.7.

ARTICLE XV
DISPUTE RESOLUTION

15.1 Dispute Resolution. Except to the extent set forth in Article X, in the event of any dispute arising under this Agreement, within ten (10) Days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within ten (10) Days of initiating such discussions, or within fifteen (15) Days after notice of the dispute, either Party may submit the dispute to final and binding arbitration by delivering a notice to the other Party of its intent to submit the matter for arbitration ("Arbitration Notice").

The arbitration shall be administered by the American Arbitration Association and take place in Los Angeles, California before a single arbitrator, unless the Parties otherwise mutually agree to a panel of three arbitrators, selected in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration shall be governed by the U.S. Federal Arbitration Act.

Unless otherwise agreed in writing by the Parties, discovery in arbitration shall be completed within ninety (90) days after the appointment of the arbitrator(s), and the arbitrator(s)

may restrict the scope and number of discovery demands permitted, including but not limited to the number of depositions that may be taken, to ensure compliance with this 90-day limitation.

In addition, unless otherwise agreed in writing by the Parties, a hearing on the arbitration shall be conducted no later than one hundred and twenty (120) days after appointment of the arbitrator(s). The arbitrator(s) shall render a written decision stating the reasons therefor as soon as practicable after the close of the hearing but, in any case, no later than thirty (30) days the conclusion thereof. The arbitrator's award shall be a reasoned award and issued pursuant to law and shall be final and binding. The arbitration award shall be enforceable in any court of competent jurisdiction.

The expenses of the arbitration proceeding until the issuance of the arbitration award, excluding the Parties' own expenses and attorneys' fees, shall be shared equally by the Parties. The arbitration award shall grant the prevailing Party the reimbursement of reasonable attorney's fees and expenses as provided in Section 15.2.

15.2 Attorneys' Fees. In any arbitration or litigation to enforce the provisions of this Agreement, the prevailing Party in such action shall be entitled to the recovery of its reasonable legal fees and expenses (including reasonable attorneys' fees and legal costs), its corresponding share of the fees of the arbitrator, and costs and expenses such as the prevailing Party's expert witness fees, all as fixed by the arbitrator or court.

15.3 Third Parties. If a dispute arises between the Parties which is subject to the arbitration provisions hereunder and there exists or later arises a controversy, claim, dispute or difference between either of the Parties and any third party arising out of or related to the same transaction or series of transactions ("Third Party Controversy"), either Party shall be entitled to require that (a) the other Party be joined as a party to any arbitration of such Third Party Controversy being pursued with such third party and Owner or Company (as the case may be) shall permit, and cooperate in, such joinder or (b) the third party be joined as a party to the arbitration proceeding hereunder; provided, however, that, for purposes of clause (a) above, the rules and procedures applicable to the arbitration of such Third Party Controversy are substantially the same in all material respects as the rules and procedures provided for herein; *provided, further*, that, for purposes of clause (b) above, the third party consents to such joinder within ten (10) Days after an Arbitration Notice has been filed. Company shall use commercially reasonable efforts to (i) include arbitration provisions substantially the same in all material respects as provided for herein in each Subcontract and (ii) require each Subcontractor to expressly consent to its joinder to any arbitration proceedings hereunder. Once a third party is joined to a dispute hereunder pursuant to this Section 15.3, such third party shall be entitled to treatment as a Party for purposes of the arbitration procedures of this Article XV.

15.4 Survival. The provisions set forth in this Article XV shall survive the termination or expiration of this Agreement.

ARTICLE XVI
MISCELLANEOUS PROVISIONS

16.1 Assignment. Subject to the following, this Agreement shall be binding upon the Parties their respective successors and permitted assigns. Except as set forth herein, this Agreement and all of Company's rights, duties and obligations under this Agreement are personal in nature and shall not be assigned, delegated or otherwise disposed of by Company without the prior written consent of Owner. Owner may assign this Agreement in whole or in part (a) to any of its Affiliates; (b) to any Person succeeding to all or substantially all of the assets of Owner (whether voluntary or by operation of law); or (c) to any Person that demonstrates to Company's reasonable satisfaction that it is financially capable of performing Owner's obligations under this Agreement and agrees in writing to assume Owner's duties and obligations under this Agreement, and in each case of clause (a), (b) or (c), Owner shall be released upon assignment. Owner may assign this Agreement to a third party; provided that Company is provided written notice as soon as reasonably possible following such assignment; and *provided, further*, that unless such assignment is pursuant to clauses (a), (b), or (c) above or otherwise novated pursuant to written agreement between Company, Owner, and Owner's assignee, Owner shall continue to remain responsible for its obligations and liabilities under this Agreement. Company agrees and acknowledges that any third party receiving such an assignment, provided it assumes all obligations hereunder in writing, shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner), and Company shall comply in all respects with such exercise.

16.2 Specific Performance. The Parties acknowledge and agree that each Party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, such Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary, and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

16.3 No Rights in Third Parties. Except as otherwise set forth herein, including with respect to the rights of permitted successors and assigns and indemnitees, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

16.4 Confidentiality.

16.4.1 Confidential Information and Permitted Disclosures. Each Party shall hold in confidence (a) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date, (b) only as an obligation of Company (and not

Owner), the commercial terms of any leases or other documents related to the Real Property Rights, and (c) the contents of this Agreement (collectively, "Confidential Information"). Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Section 16.4 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information: (i) information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives; (ii) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation; (iii) information received by such Party from a third party having no obligation of confidentiality with respect thereto; or (iv) information at any time developed independently by such Party, provided it is not developed from otherwise Confidential Information.

16.4.2 Permitted Disclosures. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

(a) Confidential Information may be disclosed pursuant to and in conformity with Applicable Laws or in connection with any legal proceedings described in Article XV, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

(b) Confidential Information may be disclosed as required under securities laws applicable to publicly traded companies and their subsidiaries;

(c) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisors or representatives (including attorneys, accountants, financial advisors or other agents) of such Party (including Owner's Engineer) as necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Section 16.4; and

(d) Owner may disclose a copy of this Agreement to any actual or potential lenders, insurers and/or in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations.

16.4.3 Consent. Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

16.4.4 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section 16.4, without proof of any actual or special damages.

16.4.5 Ownership of Confidential Information. All right and title to, and interest in, a Party's Confidential Information shall remain with such Party, provided that all Confidential Information obtained, developed or created by or for Company exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Company or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Company's performance of its obligations hereunder. Company shall deliver the Confidential Information, including all copies thereof, to Owner upon request.

16.4.6 Survival. The Parties' obligations under this Section 16.4 shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion or, in the event this Agreement is terminated prior to Final Completion, for a period of five (5) years following the date that such early termination takes effect pursuant to the terms hereof.

16.5 Public Statements. Neither Party may issue or make any public announcement, press release or statement regarding this Agreement unless such public announcement, press release or statement is issued jointly by the Parties; or, prior to the release of the public announcement, press release or statement, any such Party wishing to make any such public statement furnishes the other Party with a copy of such public announcement, press release or statement and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; provided that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with Applicable Laws, legal proceedings or the rules and regulations of any stock exchange having jurisdiction over such Party.

16.6 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any the other Party shall be in writing and signed by the Party giving such notice and shall be deemed duly served, given and received (i) upon personal delivery; (ii) on the next Business Day after deposited with a nationally recognized courier service for overnight delivery to the Party to whom notice is to be given, (iii) when received by the Party to whom it is sent, if sent by regular mail; (iii) when received (with confirmation of receipt) if delivered by facsimile or email, or (iv) on the third (3rd) Business Day after mailing, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, in each case addressed to the appropriate Party at the address, email, and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with this Section 16.6):

If to Owner:

Woodside Energy (USA), Inc.
c/o Woodside Energy Ltd.
Mia Yellagonga
Karlak, 11 Mount Street
Perth WA 6000
Australia

Telephone: […***…]
Attention: Dave Noblett
Email: […***…]

with a copy to:
Woodside Energy (USA), Inc.
Telephone: […***…]
Attention: Jason Crusan
Email: […***…]

If to Company:

Heliogen Holdings, Inc.
130 W Union St,
Pasadena, CA 91103

Telephone: […***…]
Attn: Amanda Gold, Project Manager
Email: […***…]

with a copy to:
Heliogen Legal Department
Attention: General Counsel
Email: […***…]

16.7 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto, and such prior agreements shall be null and void and of no further force and effect. All the Exhibits (Exhibit A-1 through Exhibit Q) attached hereto are incorporated into and made a part of this Agreement. There are no other oral understandings, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

16.8 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties. For the avoidance of doubt, emails between the Parties shall not be considered a writing for purposes of this Section 16.8, but written documents attached to emails shall be considered a writing.

16.9 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, whether then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

16.10 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision that is as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and is legal, valid and enforceable.

16.11 Time of the Essence. Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

16.12 Survival. Termination or expiration of this Agreement (a) shall not relieve any Party of any obligation hereunder which expressly or by implication survives termination hereof; (b) shall not relieve either Owner or Company of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination; and (c) if the termination is for default by Company, shall not relieve Company of its obligations as to portions of the Work or other services hereunder already performed or of obligations assumed by Company prior to the date of termination. This Article XVI shall survive the termination or expiration of this Agreement. Provisions of this Agreement which expressly provide for survival shall survive the expiration or termination of this Agreement for the periods of time so noted. The representations and warranties of Company contained herein shall survive the termination of this Agreement.

16.13 Governing Law. This Agreement shall be governed by construed and enforced in accordance with the laws of the State of California, without regard to choice of law provisions.

16.14 Expenses and Further Assurances. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement. Company and Owner agree to provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

16.15 Status of Company; No Partnership; No Agency. Company shall be an independent contractor with respect to any and all Work performed and to be performed under this Agreement. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligation or liability. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, act as or be an agent or representative of, or otherwise bind or obligate, the other Party.

16.16 Liquidated Damages. The Parties agree that liquidated damages will not apply to this Agreement.

16.17 Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

16.18 Facsimile or Electronic Delivery. This Agreement and any amendment hereto may be duly executed and delivered by execution and facsimile or electronic format (including portable document format (pdf)) delivery of the signature page of a counterpart to the other Party.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

OWNER:

WOODSIDE ENERGY (USA), INC.

By:

Name:

Title:

COMPANY:

HELIOGEN HOLDINGS INC.

By:

Name:

Title:

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE HOLDER OF THIS WARRANT SHOULD BE AWARE THAT IT MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

WARRANT TO PURCHASE CLASS A COMMON STOCK
OF
HELIOGEN, INC.

Issued on March 28, 2022

Heliogen, Inc., a Delaware corporation (the "***Company***"), hereby certifies that Woodside Energy (USA), Inc. ("***Holder***") is entitled, subject to the terms and conditions of this Warrant to Purchase Class A Common Stock (this "***Warrant***"), to purchase from the Company up to 912,409 shares of Warrant Stock (as defined below) at a purchase price of $0.01 per share (the "***Warrant Price***"). The Warrant Price and the number and character of shares of Warrant Stock purchasable under this Warrant are subject to adjustment as provided herein.

This Warrant is being issued in connection with a Commercial Scale Demonstration Agreement between Heliogen Holdings, Inc., a wholly-owned subsidiary of the Company, and Woodside Energy (USA), Inc. to develop a concentrated solar facility (the "***Commercial Agreement***").

1. **DEFINITIONS.** The following definitions shall apply for purposes of this Warrant:

1.1 "***Affiliate***" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, 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 possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the exercise of voting power, by contract or otherwise.

1.2 "***Business Day***" means any day other than a Saturday, Sunday or other day on which the commercial banks in Pasadena, California are authorized or required by law to remain closed.

1.3 "***Change of Control***" means (a) any sale or exchange of the capital stock by the stockholders of the Company in one transaction or series of related transactions where more than 50% of the outstanding voting power of the Company is acquired by a person or entity or group of related persons or entities; or (b) a Deemed Liquidation Event (as defined in the

Company's Amended and Restated Certificate of Incorporation, as amended from time to time (the "***Certificate of Incorporation***")).

1.4 "***Expiration Date***" means 5:00 p.m. Pacific time on the five-year anniversary of the date of this Warrant, unless earlier terminated in connection with a Change of Control as set forth herein.

1.5 **"*Issue Date*"** means the date of this Warrant first set forth above.

1.6 "***Person***" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or any agency or subdivision thereof) or other entity of any kind.

1.7 "***Quarter***" means each 3 month period ending 31 March, 30 June, 30 September and 31 December.

1.8 "***Quarterly Proportion***" means, in relation to a Quarter, the value (expressed as a decimal fraction) for 'Quarterly Proportion$_Q$' calculated at the end of that Quarter as follows:

$$Quarterly\ Proportion_Q = \left(\frac{\sum Monthly\ Payments_Q}{50{,}000{,}000} \right)$$

where:

Monthly Payments$_Q$ is the total amount (in USD) for the relevant Quarter equal to the aggregate of:

(i) the 'Monthly Progress Payments' set out in Exhibit C-2 of the Commercial Agreement to be paid by Holder in respect of the months occurring during the relevant Quarter or, with respect to the first Quarter only, any payments made prior to that first Quarter; and

(ii) the 'Vendor/Activity Milestone Payments' set out in Exhibit C-2 of the Commercial Agreement to be paid by Holder in respect of the months occurring during the relevant Quarter or, with respect to the first Quarter only, any payments made prior to that first Quarter.

1.9 "***Quarterly Tranche***" means the number of Warrant Stock that equals 'Quarterly Tranche' calculated at the end of each Quarter as follows:

Quarterly Tranche = Total Warrants X *Quarterly Proportion*

where:

Total Warrants is 912,409, being 100% of the Warrant Stock available under this Warrant; and

Quarterly Proportion is the Quarterly Proportion (expressed as a decimal fraction) calculated at the end of the relevant Quarter.

1.10 "***Registration Rights Agreement***" means the registration Rights and Lock-Up Agreement among the Company and the parties listed on Schedule A entered into as of December 30, 2021.

1.11 "***Securities Act***" means the Securities Act of 1933, as amended.

1.12 **"*Warrant Stock*"** means the shares of Class A Common Stock of the Company issuable pursuant to this Warrant, as may be adjusted as set forth herein.

2. **VESTING; EXERCISE**.

2.1 **Vesting Schedule and Exercise Period**.

(a) At the end of each Quarter and until this Warrant is fully vested, the number of shares of Warrant Stock equal to the Quarterly Tranche shall be immediately fully vested and exercisable by the Holder.

(b) In the event of a Change of Control, if the Company does not elect to have this Warrant assumed as set forth in Section 2.3 below, the vesting of this Warrant will accelerate in full and Holder may exercise up to 100% of the then-unexercised portion of this Warrant effective immediately prior to the Closing of such Change of Control in accordance with Section 2.3 below.

2.2 **Expiration and Automatic Termination**. To the extent not exercised prior to the Expiration Date, this Warrant shall automatically expire and be of no further force and effect on the Expiration Date, and upon such date this Warrant will no longer be exercisable for any shares of Warrant Stock.

2.3 **Treatment Upon a Change of Control**. In the case of a Change of Control, the Company shall give Holder at least ten (10) Business Days advance written notice of such Change of Control, or such shorter period of time as may be consented to in writing by Holder (the "***Company Notice***"), and the Company may elect to either (i) have the vesting of this Warrant accelerate in full pursuant to Section 2.1(b) and allow Holder to exercise up to 100% of the then-unexercised portion of this Warrant effective immediately prior to the Closing of such Change of Control, in which case this Warrant shall terminate and be of no further force or effect as of the Closing of such Change of Control, or (ii) allow this Warrant to remain subject to vesting without any acceleration pursuant to Section 2.1(a), in which case the Company shall cause the acquiring, surviving or successor entity to assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities, cash and/or other property as would have been paid and/or delivered to the Holder upon the exercise of the unexercised portion of this Warrant as if the applicable Warrant Stock were outstanding on and as of the closing of

such Change of Control (subject to further adjustment from time to time in accordance with the provisions of this Warrant).

2.4 Method of Exercise. Subject to the terms and conditions of this Warrant, the Holder may exercise this Warrant, in whole or in part, for up to the number of vested shares of Warrant Stock, by delivering written notice of such exercise to the Company, together with the subscription form attached hereto as Exhibit 1 duly executed by the Holder (the "***Exercise Notice***") and payment (unless exercised pursuant to Section 2.9) of an amount equal to the product obtained by multiplying (i) the number of shares of Warrant Stock to be purchased by the Holder by (ii) the Warrant Price. Notwithstanding anything in this Warrant to the contrary, this Warrant shall be automatically exercised to the extent vested immediately prior to the Expiration Date by cashless exercise pursuant to Section 2.9 without any action on the part of the Holder.

2.5 Form of Payment. Payment may be made by (i) a check payable to the Company's order, (ii) wire transfer of funds to the Company, (iii) cancellation of indebtedness of the Company to the Holder or (iv) any combination of the foregoing.

2.6 Partial Exercise. Upon a partial exercise of this Warrant, this Warrant may thereafter be exercised solely for up to the remaining number of vested shares of Warrant Stock not previously purchased or converted upon exercise of this Warrant. If this Warrant shall have been exercised in part, upon the request of the Holder and upon delivery of this Warrant to the Company, the Company shall deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Warrant Stock, which new Warrant shall in all other respects be identical to this Warrant.

2.7 No Fractional Shares. No fractional shares may be issued upon any exercise of this Warrant, and any fractions shall be rounded down to the nearest whole number of shares. If upon any exercise of this Warrant a fraction of a share results, the Company will pay the cash value of any such fractional share, calculated on the basis of the Warrant Price.

2.8 Restrictions on Exercise. As a condition to the exercise of this Warrant, the Holder shall execute the subscription form attached hereto as Exhibit 1, confirming and acknowledging that the representations and warranties of the Holder set forth in Section 7 below are true and correct as of the date of exercise.

2.9 Net Exercise Election. The Holder may elect to convert all or a portion of this Warrant (to the extent vested), without the payment by the Holder of any additional consideration, by the surrender of this Warrant or such portion to the Company, with the net exercise election selected in the subscription form attached hereto duly executed by the Holder, into up to the number of shares of Warrant Stock that is obtained under the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

where X = the number of shares of Warrant Stock to be issued to the Holder pursuant to this Section 2.9.

Y = the number of shares of Warrant Stock (at the date of such calculation) for which this Warrant may then be exercised.

A = the fair market value of one share of Warrant Stock, determined as set forth below as at the time the net exercise election is made pursuant to this Section 2.9.

B = the Warrant Price.

For purposes of the above calculation, the fair market value of one share of Warrant Stock shall be determined by the Company's Board of Directors in good faith; provided, that (a) if the exercise is in connection with a Change of Control, the fair market value shall be the value attributed to a share of Common Stock of the Company in the Change of Control; and (b) If the Company's Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market, the fair market value shall be the closing price or last sale price of a share of the Common Stock of the Company reported for the business day immediately before the date on which Holder delivers this Warrant together with the Exercise Notice.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that any shares of Warrant Stock issued in a cashless exercise pursuant to this Section 2.9 shall be deemed to have been acquired by the Holder, and the holding period for such shares of Warrant Stock shall be deemed to have commenced, on the Issue Date.

2.10 **Taxes**. Issuance of shares of Warrant Stock shall be made without charge to the Holder for any issue or transfer tax in respect of the issuance of such shares of Warrant Stock, all of which taxes shall be paid by the Company.

3. **ISSUANCE OF STOCK.** Except as set forth in Section 2.3 or Section 2.4 above, this Warrant shall be deemed to have been exercised immediately prior to the close of business on the date the applicable Exercise Notice and payment (if not exercised pursuant to Section 2.9) are delivered to the Company, and the person or entity entitled to receive the shares of Warrant Stock issuable upon such exercise shall be treated for all purposes as the holder of record of such shares as of the close of business on such date; provided, that, upon the exercise of this Warrant in connection with a Change of Control, the exercise and payment may be contingent upon consummation of such transaction. As soon as practicable on or after such date, the Company shall issue and deliver to the person or entity entitled to receive the same a certificate or certificates for the number of whole shares of Warrant Stock issuable upon such exercise.

4. **ADJUSTMENT PROVISIONS.** The number and character of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares of stock or other securities or property at the time receivable or issuable upon exercise of this Warrant) and the Warrant Price therefor are subject to adjustment upon the occurrence of the following events between the Issue Date and the date this Warrant is exercised:

4.1 **Adjustment for Stock Splits and Stock Dividends**. The Warrant Price and the number of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares

of stock or other securities at the time issuable upon exercise of this Warrant) shall each be proportionally adjusted to reflect any stock dividend, stock split or reverse stock split, or other similar event affecting the number of outstanding shares of Warrant Stock (or such other stock or securities).

4.2 **Adjustment for Reorganization, Consolidation, Merger**. Except as provided in Section 2.3 above, in case of any recapitalization, reorganization, consolidation or merger of the Company after the date of this Warrant other than a Change of Control, the Holder, upon the exercise of this Warrant in accordance with its terms, at any time after the consummation of such recapitalization, reorganization, consolidation or merger, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise of this Warrant prior to such consummation, the same securities, cash and/or other property to which the Holder would have been entitled to receive upon the consummation of such recapitalization, reorganization, consolidation or merger if the Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment as provided in this Warrant, and the successor or purchasing corporation in such reorganization, consolidation or merger (if other than the Company) shall duly execute and deliver to the Holder a supplement hereto acknowledging such corporation's obligations under this Warrant; and in each such case, the terms of this Warrant shall be applicable to the shares of stock or other securities or property receivable upon the exercise of this Warrant after the consummation of such reorganization, consolidation or merger.

4.3 **Notice of Adjustments**. The Company shall give Holder prompt written notice of any event that would result in the adjustment or readjustment to the number of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares of stock or other securities or property at the time receivable or issuable upon exercise of this Warrant) and/or the Warrant Price therefor, in each case, pursuant to this Section 4. The notice shall describe the adjustment or readjustment and show in reasonable detail the facts on which the adjustment or readjustment is based and shall be delivered promptly following the event requiring such adjustment but in any no later than ten (10) Business Days following such event.

4.4 **No Change Necessary**. The form of this Warrant need not be changed because of any adjustment in the Warrant Price or in the number of shares of Warrant Stock issuable upon its exercise.

4.5 **Reservation of Stock**. If at any time the number of authorized but unissued shares of Warrant Stock or other securities issuable upon exercise of this Warrant shall not be sufficient to effect the exercise of this Warrant, the Company shall take such corporate action as is necessary to increase its authorized but unissued shares of Warrant Stock or other securities issuable upon exercise of this Warrant as shall be sufficient for such purpose.

4.6 **Other Dividends or Distributions.** Without duplication of the notice obligation in Section 4.3 above, if, on or after the Issue Date and on or prior to the Expiration Date, the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of any equity securities of the Company, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other

similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Company shall give Holder notice of such Distribution at least ten (10) Business Days prior to the record date with respect to such Distribution.

5. **NO RIGHTS OR LIABILITIES AS STOCKHOLDER.** This Warrant does not by itself entitle the Holder to any voting rights or other rights as a stockholder of the Company. In the absence of affirmative action by the Holder to purchase Warrant Stock by exercise of this Warrant, no provisions of this Warrant, and no enumeration herein of the rights or privileges of the Holder, shall cause the Holder to be a stockholder of the Company for any purpose.

6. **AGREEMENT TO BE BOUND.** Upon exercise of this Warrant, and as a condition of such exercise, Holder agrees to be bound by, and hold the shares of Warrant Stock subject to, the Company's Bylaws and any voting agreement other stockholder agreement then in effect that holders of Common Stock of the Company or stock options representing more than 1% of the Company's outstanding Common Stock (on a fully diluted basis) are required to enter into by the Company (any such agreement, the "***Stockholder Agreements***"). Upon exercise of this Warrant, Holder agrees to execute a counterpart signature page or adoption agreement to any such Stockholder Agreement upon request of the Company.

7. **REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF HOLDER**. Holder hereby represents and warrants to, and agrees with, the Company as follows:

7.1 **Authorization**. This Warrant constitutes Holder's valid and legally binding obligation, enforceable against Holder in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies. Holder represents and warrants to the Company that Holder has full power and authority to enter into this Warrant.

7.2 **Purchase for Own Account**. The Warrant and the Warrant Stock issuable upon exercise hereof (collectively, the "***Securities***") will be acquired for investment for Holder's own account, not as a nominee or agent, and not with a view to the public resale or distribution thereof within the meaning of the Securities Act, and Holder has no present intention of selling, granting any participation in, or otherwise distributing the same.

7.3 **No Solicitation**. At no time was Holder presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale and purchase of the Securities.

7.4 **Disclosure of Information**. Holder has received or has had full access to all the information Holder considers necessary or appropriate to make an informed investment decision with respect to the Securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder had access.

7.5 **Investment Experience**. Holder understands that the purchase of the Securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder is able to fend for itself, can bear the economic risk of Holder's investment in the Securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of this investment in the Securities and protecting Holder's own interests in connection with this investment in the Securities.

7.6 **Accredited Investor Status**. Holder is familiar with the definition of, and qualifies as, an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

7.7 **Restricted Securities**. Holder understands that the Securities are characterized as "restricted securities" under the Securities Act and Rule 144 promulgated thereunder ("***Rule 144***") since they are being acquired from the Company in a transaction not involving a public offering, and that under the Securities Act and applicable regulations thereunder the Securities may be resold without registration under the Securities Act only in certain limited circumstances. Holder further understands that the Company is under no obligation to register the Securities, and the Company has no present plans to do so. Furthermore, Holder is familiar with Rule 144, as presently in effect, and understands the limitations imposed thereby and by the Securities Act on resale of the Securities without such registration. Holder understands that, whether or not the Securities may be resold in the future without registration under the Securities Act, no public market now exists for any of the Securities and that it is uncertain whether a public market will ever exist for the Securities.

7.8 **Further Limitations on Disposition**. Without in any way limiting the representations set forth above, Holder further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such effective registration statement; or

(b) Holder shall have (i) notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition and (ii) if requested by the Company in connection with a disposition of all or any portion of this Warrant only (and not, for the avoidance of doubt, a disposition of all or any portion of the Warrant Stock), at the expense of Holder or its transferee, delivered to the Company an opinion of counsel reasonably satisfactory in form and substance that such disposition will not require registration of such Securities under the Securities Act.

Notwithstanding the provisions of paragraphs (a) and (b) of this Section 7.8, no such registration statement or opinion of counsel shall be required for any transfer of any Securities for no consideration to any affiliate of Holder; provided that the transferee agrees in writing to be subject to the terms of this Warrant to the same extent as Holder.

7.9 **Legends**. Holder understands and agrees that the certificates evidencing the Securities may bear legends substantially similar to those set forth below in addition to any other legend that may be required by applicable law, any Stockholder Agreement, the Certificate of Incorporation, or the Company's Bylaws, or any other agreement between the Company and Holder:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUCH SECURITIES MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION, OR UNLESS THE ISSUER RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION MAY BE MADE PURSUANT TO RULE 144 OR IS OTHERWISE IN COMPLIANCE WITH THE ACT.

The legend set forth above shall be removed by the Company from any certificate evidencing the Securities if (i) a registration statement under the Securities Act is at that time in effect with respect to the legended Security, (ii) such Security is eligible for sale under Rule 144 of the Securities Act, or (iii) if such legend is otherwise not required under applicable requirements of the Securities Act.

7.10 **Foreign Holder**. If Holder is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), Holder hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with this Warrant and the Warrant Stock, including (i) the legal requirements within its jurisdiction for the issuance of this Warrant and the Warrant Stock, (ii) any foreign exchange restrictions applicable to such issuance, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the issuance, holding, redemption, sale, or transfer of this Warrant or the Warrant Stock. Holder's acceptance of this Warrant, and any exercise and payment for and continued beneficial ownership of the Warrant Stock hereunder, will not violate any applicable securities or other laws of Holder's jurisdiction.

8. **TRANSFER.** Subject to compliance with applicable federal and state securities laws, this Warrant (including any and all rights and obligations hereunder) may be assigned, conveyed or transferred, in whole or in part, only to Affiliates of the Holder or with the prior written consent of the Company; provided, that, Holder may not sell, assign, convey, or transfer this Warrant (or any rights or obligations hereunder) or any Warrant Stock for the one year period immediately following the Issue Date to Affiliates of Holder or otherwise without prior written consent of the Company. Within a reasonable time after the transfer of this Warrant by the Holder, the transfer shall be recorded on the books of the Company upon the surrender of this Warrant, properly endorsed, to the Company at its principal offices, and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. The rights and obligations of the Company and Holder under this Warrant shall be binding upon and benefit their respective permitted successors, assigns, heirs, administrators and transferees.

9. **REGISTRATION RIGHTS**. If after the effective date of the Registration Rights Agreement the Company shall effect a Registration (as defined in the Registration Rights Agreement) pursuant to a Demand Registration (as defined in the Registration Rights Agreement) as set forth in Section 2.1.1 of the Registration Rights Agreement, the Company shall notify Holder in writing of such demand within ten (10) days of the Company's receipt of the Demand Registration and, if Holder wishes to include all or a portion of the then-vested shares of Warrant Stock in such Registration, Holder shall so notify the Company, in writing, within five (5) days after the receipt by Holder of the notice from the Company and Holder shall exercise the applicable vested portion of this Warrant in accordance with Section 2.4 or 2.9 hereof, and thereafter Holder shall be considered a Requesting Holder (as defined in the Registration Rights Agreement) as set forth in Section 2.1.1 of the Registration Rights Agreement and the applicable shares of Warrant Stock that were exercised by Holder shall be included such Registration.

10. **GOVERNING LAW.** This Warrant shall be governed by and construed under the laws of the State of New York, without reference to principles of conflict of laws or choice of laws.

11. **HEADINGS.** The headings and captions used in this Warrant are used only for convenience and are not to be considered in construing or interpreting this Warrant. All references in this Warrant to sections and exhibits shall, unless otherwise provided, refer to sections hereof and exhibits attached hereto, all of which exhibits are incorporated herein by this reference.

12. **NOTICES.** Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (i) at the time of personal delivery, if delivery is in person; (ii) one (1) Business Day after deposit with an express overnight courier for United States deliveries, or two (2) Business Days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; (iii) three (3) Business Days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries when addressed to the party to be notified and, in case of Holder, at the address set forth on the signature page hereto, or, in the case of the Company, at the address first set forth above, or at such other address as Holder or the Company may designate by written notice to the other party, or (iv) upon email transmission to the address set forth on the signature page hereto, or at such other address as Holder or the Company may designate by written notice to the other party.

13. **AMENDMENT; WAIVER.** Any term of this Warrant may be amended, and the observance of any term of this Warrant may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and Holder. Any amendment or waiver effected in accordance with this Section shall be binding upon Holder, each future holder of the Securities, and the Company.

14. **SEVERABILITY.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

15. **TERMS BINDING.** By acceptance of this Warrant, Holder accepts and agrees to be bound by all the terms and conditions of this Warrant.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Warrant as of the date first above written.

COMPANY:

Heliogen, Inc.

By:	/s/ Bill Gross
Name:	Bill Gross
Title:	CEO
Email:	bill@heliogen.com
Address:	130 West Union Street
	Pasadena, CA 91103

HOLDER:

Woodside Energy (USA), Inc.

By:	/s/ Thomas Feutrill
Name:	Thomas Feutrill
Title:	Director
Email:	tom.feutrill@woodside.com.au
Address:	3040 Post Oak Boulevard
	Suite 1800-0134 Houston, Texas 77056

EXHIBIT 1

FORM OF SUBSCRIPTION
(To be signed only upon exercise of Warrant)

To: **Heliogen, Inc.**

(1) The undersigned Holder hereby elects to purchase _____ shares of Class A Common Stock of Heliogen, Inc., a Delaware corporation (the "***Warrant Stock***"), pursuant to the terms of the attached Warrant, and [CASH PAYMENT: tenders herewith payment of the Purchase Price in full, together with all applicable transfer taxes, if any.] [NET ISSUANCE: elects pursuant to Section 2.9 of the Warrant to effect a net exercise.]

(2) In exercising the Warrant, the undersigned Holder hereby confirms and acknowledges that the representations and warranties set forth in Section 7 of the Warrant as they apply to the undersigned Holder continue to be true and correct as of this date.

(3) Please issue a certificate or certificates representing such shares of Warrant Stock in the name specified below:

_____
(Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Federal Tax Identification Number)

HOLDER:

Woodside Energy (USA), Inc.

Signature:_____

Name: _____

Title: _____

Date: _____

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE HOLDER OF THIS WARRANT SHOULD BE AWARE THAT IT MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

WARRANT TO PURCHASE CLASS A COMMON STOCK
OF
HELIOGEN, INC.

Issued on March 28, 2022

Heliogen, Inc., a Delaware corporation (the "***Company***"), hereby certifies that Woodside Energy (USA), Inc. ("***Holder***") is entitled, subject to the terms and conditions of this Warrant to Purchase Class A Common Stock (this "***Warrant***"), to purchase from the Company up to 3,649,635 shares of Warrant Stock (as defined below) at a purchase price of $0.01 per share (the "***Warrant Price***"). The Warrant Price and the number and character of shares of Warrant Stock purchasable under this Warrant are subject to adjustment as provided herein.

This Warrant is being issued in connection with (i) the Collaboration Agreement – Australia between the Company and Woodside Energy Technologies Pty. Ltd. (which will be entered into contemporaneously herewith) (the **"*Australian Collaboration Agreement***"); and (ii) the Collaboration Agreement – USA between the Company and Woodside Energy (USA), Inc. ("***USA Collaboration Agreement***"), which the parties intend to enter into after the date hereof.

1. **DEFINITIONS.** The following definitions shall apply for purposes of this Warrant:

1.1 "***Affiliate***" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, 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 possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the exercise of voting power, by contract or otherwise.

1.2 "***Business Day***" means any day other than a Saturday, Sunday or other day on which the commercial banks in Pasadena, California are authorized or required by law to remain closed.

1.3 "***Change of Control***" means (a) any sale or exchange of the capital stock by the stockholders of the Company in one transaction or series of related transactions where more than 50% of the outstanding voting power of the Company is acquired by a person or entity or group of related persons or entities; or (b) a Deemed Liquidation Event (as defined in the

Company's Amended and Restated Certificate of Incorporation, as amended from time to time (the "***Certificate of Incorporation***")).

1.4 "***Collaboration Agreements***" means Australian Collaboration Agreement and USA Collaboration Agreement.

1.5 "***Expiration Date***" means 5:00 p.m. Pacific time on the five-year anniversary of the date of this Warrant, unless earlier terminated in connection with a Change of Control as set forth herein.

1.6 **"*Issue Date*"** means the date of this Warrant first set forth above.

1.7 "***Person***" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or any agency or subdivision thereof) or other entity of any kind.

1.8 "***Registration Rights Agreement"*** means the registration Rights and Lock-Up Agreement among the Company and the parties listed on Schedule A entered into as of December 30, 2021.

1.9 "***Securities Act***" means the Securities Act of 1933, as amended.

1.10 "***Unit***" means a 'Unit' as defined under either Collaboration Agreement.

1.11 **"*Warrant Stock*"** means the shares of Class A Common Stock of the Company issuable pursuant to this Warrant, as may be adjusted as set forth herein.

2. VESTING; EXERCISE.

2.1 Vesting Schedule and Exercise Period.

(a) Upon the earlier of execution of the Australian Collaboration Agreement and the USA Collaboration Agreement (whichever occurs first), 1,824,818 shares of Warrant Stock shall be immediately fully vested and exercisable by the Holder. Thereafter, for each Unit agreed to be purchased by a customer under a binding obligation in an executed contract (including, by way of example, a customer sales and purchase agreement, but not including a Limited Notice To Proceed (LNTP)) between Company and the relevant customer (including with Holder or an Affiliate of Holder) in Australia or the United States in connection with activities under the relevant Collaboration Agreement, 182,482 shares of Warrant Stock shall vest and become exercisable by the Holder, until such time as this Warrant is fully vested or the relevant Collaboration Agreement is terminated.

(b) In the event of a Change of Control, if the Company does not elect to have this Warrant assumed as set forth in Section 2.3 below, the vesting of this Warrant will accelerate in full and Holder may exercise up to 100% of the then-unexercised portion of this Warrant effective immediately prior to the Closing of such Change of Control in accordance with Section 2.3 below.

2.2 **Expiration and Automatic Termination**. To the extent not exercised prior to the Expiration Date, this Warrant shall automatically expire and be of no further force and effect on the Expiration Date, and upon such date this Warrant will no longer be exercisable for any shares of Warrant Stock.

2.3 **Treatment Upon a Change of Control**. In the case of a Change of Control, the Company shall give Holder at least ten (10) Business Days advance written notice of such Change of Control, or such shorter period of time as may be consented to in writing by Holder (the "***Company Notice***"), and the Company may elect to either (i) have the vesting of this Warrant accelerate in full pursuant to Section 2.1(b) and allow Holder to exercise up to 100% of the then-unexercised portion of this Warrant effective immediately prior to the Closing of such Change of Control, in which case this Warrant shall terminate and be of no further force or effect as of the Closing of such Change of Control, or (ii) allow this Warrant to remain subject to vesting without any acceleration pursuant to Section 2.1(a), in which case the Company shall cause the acquiring, surviving or successor entity to assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities, cash and/or other property as would have been paid and/or delivered to the Holder upon the exercise of the unexercised portion of this Warrant as if the applicable Warrant Stock were outstanding on and as of the closing of such Change of Control (subject to further adjustment from time to time in accordance with the provisions of this Warrant).

2.4 **Method of Exercise**. Subject to the terms and conditions of this Warrant, the Holder may exercise this Warrant, in whole or in part, for up to the number of vested shares of Warrant Stock, by delivering written notice of such exercise to the Company, together with the subscription form attached hereto as Exhibit 1 duly executed by the Holder (the "***Exercise Notice***") and payment (unless exercised pursuant to Section 2.9) of an amount equal to the product obtained by multiplying (i) the number of shares of Warrant Stock to be purchased by the Holder by (ii) the Warrant Price. Notwithstanding anything in this Warrant to the contrary, this Warrant shall be automatically exercised to the extent vested immediately prior to the Expiration Date by cashless exercise pursuant to Section 2.9 without any action on the part of the Holder.

2.5 **Form of Payment**. Payment may be made by (i) a check payable to the Company's order, (ii) wire transfer of funds to the Company, (iii) cancellation of indebtedness of the Company to the Holder or (iv) any combination of the foregoing.

2.6 **Partial Exercise.** Upon a partial exercise of this Warrant, this Warrant may thereafter be exercised solely for up to the remaining number of vested shares of Warrant Stock not previously purchased or converted upon exercise of this Warrant. If this Warrant shall have been exercised in part, upon the request of the Holder and upon delivery of this Warrant to the Company, the Company shall deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Warrant Stock, which new Warrant shall in all other respects be identical to this Warrant.

2.7 **No Fractional Shares**. No fractional shares may be issued upon any exercise of this Warrant, and any fractions shall be rounded down to the nearest whole number of shares. If upon any exercise of this Warrant a fraction of a share results, the Company will pay the cash value of any such fractional share, calculated on the basis of the Warrant Price.

2.8 **Restrictions on Exercise**. As a condition to the exercise of this Warrant, the Holder shall execute the subscription form attached hereto as Exhibit 1, confirming and acknowledging that the representations and warranties of the Holder set forth in Section 7 below are true and correct as of the date of exercise.

2.9 **Net Exercise Election.** The Holder may elect to convert all or a portion of this Warrant (to the extent vested), without the payment by the Holder of any additional consideration, by the surrender of this Warrant or such portion to the Company, with the net exercise election selected in the subscription form attached hereto duly executed by the Holder, into up to the number of shares of Warrant Stock that is obtained under the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

where X = the number of shares of Warrant Stock to be issued to the Holder pursuant to this Section 2.9.

Y = the number of shares of Warrant Stock (at the date of such calculation) for which this Warrant may then be exercised.

A = the fair market value of one share of Warrant Stock, determined as set forth below as at the time the net exercise election is made pursuant to this Section 2.9.

B = the Warrant Price.

For purposes of the above calculation, the fair market value of one share of Warrant Stock shall be determined by the Company's Board of Directors in good faith; provided, that (a) if the exercise is in connection with a Change of Control, the fair market value shall be the value attributed to a share of Common Stock of the Company in the Change of Control; and (b) If the Company's Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market, the fair market value shall be the closing price or last sale price of a share of the Common Stock of the Company reported for the business day immediately before the date on which Holder delivers this Warrant together with the Exercise Notice.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that any shares of Warrant Stock issued in a cashless exercise pursuant to this Section 2.9 shall be deemed to have been acquired by the Holder, and the holding period for such shares of Warrant Stock shall be deemed to have commenced, on the Issue Date.

2.10 **Taxes**. Issuance of shares of Warrant Stock shall be made without charge to the Holder for any issue or transfer tax in respect of the issuance of such shares of Warrant Stock, all of which taxes shall be paid by the Company.

3. **ISSUANCE OF STOCK.** Except as set forth in Section 2.3 or Section 2.4 above, this Warrant shall be deemed to have been exercised immediately prior to the close of business on the date the applicable Exercise Notice and payment (if not exercised pursuant to Section 2.9) are delivered to the Company, and the person or entity entitled to receive the shares of Warrant Stock issuable upon such exercise shall be treated for all purposes as the holder of

record of such shares as of the close of business on such date; provided, that, upon the exercise of this Warrant in connection with a Change of Control, the exercise and payment may be contingent upon consummation of such transaction. As soon as practicable on or after such date, the Company shall issue and deliver to the person or entity entitled to receive the same a certificate or certificates for the number of whole shares of Warrant Stock issuable upon such exercise.

4. ADJUSTMENT PROVISIONS. The number and character of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares of stock or other securities or property at the time receivable or issuable upon exercise of this Warrant) and the Warrant Price therefor are subject to adjustment upon the occurrence of the following events between the Issue Date and the date this Warrant is exercised:

4.1 Adjustment for Stock Splits and Stock Dividends. The Warrant Price and the number of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares of stock or other securities at the time issuable upon exercise of this Warrant) shall each be proportionally adjusted to reflect any stock dividend, stock split or reverse stock split, or other similar event affecting the number of outstanding shares of Warrant Stock (or such other stock or securities).

4.2 Adjustment for Reorganization, Consolidation, Merger. Except as provided in Section 2.3 above, in case of any recapitalization, reorganization, consolidation or merger of the Company after the date of this Warrant other than a Change of Control, the Holder, upon the exercise of this Warrant in accordance with its terms, at any time after the consummation of such recapitalization, reorganization, consolidation or merger, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise of this Warrant prior to such consummation, the same securities, cash and/or other property to which the Holder would have been entitled to receive upon the consummation of such recapitalization, reorganization, consolidation or merger if the Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment as provided in this Warrant, and the successor or purchasing corporation in such reorganization, consolidation or merger (if other than the Company) shall duly execute and deliver to the Holder a supplement hereto acknowledging such corporation's obligations under this Warrant; and in each such case, the terms of this Warrant shall be applicable to the shares of stock or other securities or property receivable upon the exercise of this Warrant after the consummation of such reorganization, consolidation or merger.

4.3 Notice of Adjustments. The Company shall give Holder prompt written notice of any event that would result in the adjustment or readjustment to the number of shares of Warrant Stock issuable upon exercise of this Warrant (or any shares of stock or other securities or property at the time receivable or issuable upon exercise of this Warrant) and/or the Warrant Price therefor, in each case, pursuant to this Section 4. The notice shall describe the adjustment or readjustment and show in reasonable detail the facts on which the adjustment or readjustment is based and shall be delivered promptly following the event requiring such adjustment but in any no later than ten (10) Business Days following such event.

4.4 **No Change Necessary**. The form of this Warrant need not be changed because of any adjustment in the Warrant Price or in the number of shares of Warrant Stock issuable upon its exercise.

4.5 **Reservation of Stock**. If at any time the number of authorized but unissued shares of Warrant Stock or other securities issuable upon exercise of this Warrant shall not be sufficient to effect the exercise of this Warrant, the Company shall take such corporate action as is necessary to increase its authorized but unissued shares of Warrant Stock or other securities issuable upon exercise of this Warrant as shall be sufficient for such purpose.

4.6 **Other Dividends or Distributions.** Without duplication of the notice obligation in Section 4.3 above, if, on or after the Issue Date and on or prior to the Expiration Date, the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of any equity securities of the Company, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin-off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Company shall give Holder notice of such Distribution at least ten (10) Business Days prior to the record date with respect to such Distribution.

5. **NO RIGHTS OR LIABILITIES AS STOCKHOLDER.** This Warrant does not by itself entitle the Holder to any voting rights or other rights as a stockholder of the Company. In the absence of affirmative action by the Holder to purchase Warrant Stock by exercise of this Warrant, no provisions of this Warrant, and no enumeration herein of the rights or privileges of the Holder, shall cause the Holder to be a stockholder of the Company for any purpose.

6. **AGREEMENT TO BE BOUND.** Upon exercise of this Warrant, and as a condition of such exercise, Holder agrees to be bound by, and hold the shares of Warrant Stock subject to, the Company's Bylaws and any voting agreement other stockholder agreement then in effect that holders of Common Stock of the Company or stock options representing more than 1% of the Company's outstanding Common Stock (on a fully diluted basis) are required to enter into by the Company (any such agreement, the "***Stockholder Agreements***"). Upon exercise of this Warrant, Holder agrees to execute a counterpart signature page or adoption agreement to any such Stockholder Agreement upon request of the Company.

7. **REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF HOLDER**. Holder hereby represents and warrants to, and agrees with, the Company as follows:

7.1 **Authorization**. This Warrant constitutes Holder's valid and legally binding obligation, enforceable against Holder in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies. Holder represents and warrants to the Company that Holder has full power and authority to enter into this Warrant.

7.2 **Purchase for Own Account**. The Warrant and the Warrant Stock issuable upon exercise hereof (collectively, the "***Securities***") will be acquired for investment for Holder's own account, not as a nominee or agent, and not with a view to the public resale or distribution thereof within the meaning of the Securities Act, and Holder has no present intention of selling, granting any participation in, or otherwise distributing the same.

7.3 **No Solicitation**. At no time was Holder presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale and purchase of the Securities.

7.4 **Disclosure of Information**. Holder has received or has had full access to all the information Holder considers necessary or appropriate to make an informed investment decision with respect to the Securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder had access.

7.5 **Investment Experience**. Holder understands that the purchase of the Securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder is able to fend for itself, can bear the economic risk of Holder's investment in the Securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of this investment in the Securities and protecting Holder's own interests in connection with this investment in the Securities.

7.6 **Accredited Investor Status**. Holder is familiar with the definition of, and qualifies as, an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

7.7 **Restricted Securities**. Holder understands that the Securities are characterized as "restricted securities" under the Securities Act and Rule 144 promulgated thereunder ("***Rule 144***") since they are being acquired from the Company in a transaction not involving a public offering, and that under the Securities Act and applicable regulations thereunder the Securities may be resold without registration under the Securities Act only in certain limited circumstances. Holder further understands that the Company is under no obligation to register the Securities, and the Company has no present plans to do so. Furthermore, Holder is familiar with Rule 144, as presently in effect, and understands the limitations imposed thereby and by the Securities Act on resale of the Securities without such registration. Holder understands that, whether or not the Securities may be resold in the future without registration under the Securities Act, no public market now exists for any of the Securities and that it is uncertain whether a public market will ever exist for the Securities.

7.8 **Further Limitations on Disposition**. Without in any way limiting the representations set forth above, Holder further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such effective registration statement; or

(b) Holder shall have (i) notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition and (ii) if requested by the Company in connection with a disposition of all or any portion of this Warrant only (and not, for the avoidance of doubt, a disposition of all or any portion of the Warrant Stock), at the expense of Holder or its transferee, delivered to the Company an opinion of counsel reasonably satisfactory in form and substance that such disposition will not require registration of such Securities under the Securities Act.

Notwithstanding the provisions of paragraphs (a) and (b) of this Section 7.8, no such registration statement or opinion of counsel shall be required for any transfer of any Securities for no consideration to any affiliate of Holder; provided that the transferee agrees in writing to be subject to the terms of this Warrant to the same extent as Holder.

7.9 **Legends**. Holder understands and agrees that the certificates evidencing the Securities may bear legends substantially similar to those set forth below in addition to any other legend that may be required by applicable law, any Stockholder Agreement, the Certificate of Incorporation, or the Company's Bylaws, or any other agreement between the Company and Holder:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUCH SECURITIES MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION, OR UNLESS THE ISSUER RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION MAY BE MADE PURSUANT TO RULE 144 OR IS OTHERWISE IN COMPLIANCE WITH THE ACT.

The legend set forth above shall be removed by the Company from any certificate evidencing the Securities if (i) a registration statement under the Securities Act is at that time in effect with respect to the legended Security, (ii) such Security is eligible for sale under Rule 144 of the Securities Act, or (iii) if such legend is otherwise not required under applicable requirements of the Securities Act.

7.10 **Foreign Holder**. If Holder is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), Holder hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with this Warrant and the Warrant Stock, including (i) the legal requirements within its jurisdiction for the issuance of this Warrant and the Warrant Stock, (ii) any foreign exchange restrictions applicable to such issuance, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the issuance, holding, redemption, sale, or transfer of this Warrant or the Warrant Stock. Holder's acceptance of this Warrant, and any exercise and payment for and continued beneficial

ownership of the Warrant Stock hereunder, will not violate any applicable securities or other laws of Holder's jurisdiction.

8. **TRANSFER.** Subject to compliance with applicable federal and state securities laws, this Warrant (including any and all rights and obligations hereunder) may be assigned, conveyed or transferred, in whole or in part, only to Affiliates of the Holder or with the prior written consent of the Company; provided, that, Holder may not sell, assign, convey, or transfer this Warrant (or any rights or obligations hereunder) or any Warrant Stock for the one year period immediately following the Issue Date to Affiliates of Holder or otherwise without prior written consent of the Company. Within a reasonable time after the transfer of this Warrant by the Holder, the transfer shall be recorded on the books of the Company upon the surrender of this Warrant, properly endorsed, to the Company at its principal offices, and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. The rights and obligations of the Company and Holder under this Warrant shall be binding upon and benefit their respective permitted successors, assigns, heirs, administrators and transferees.

9. **REGISTRATION RIGHTS**. If after the effective date of the Registration Rights Agreement the Company shall effect a Registration (as defined in the Registration Rights Agreement) pursuant to a Demand Registration (as defined in the Registration Rights Agreement) as set forth in Section 2.1.1 of the Registration Rights Agreement, the Company shall notify Holder in writing of such demand within ten (10) days of the Company's receipt of the Demand Registration and, if Holder wishes to include all or a portion of the then-vested shares of Warrant Stock in such Registration, Holder shall so notify the Company, in writing, within five (5) days after the receipt by Holder of the notice from the Company and Holder shall exercise the applicable vested portion of this Warrant in accordance with Section 2.4 or 2.9 hereof, and thereafter Holder shall be considered a Requesting Holder (as defined in the Registration Rights Agreement) as set forth in Section 2.1.1 of the Registration Rights Agreement and the applicable shares of Warrant Stock that were exercised by Holder shall be included such Registration.

10. **GOVERNING LAW.** This Warrant shall be governed by and construed under the laws of the State of New York, without reference to principles of conflict of laws or choice of laws.

11. **HEADINGS.** The headings and captions used in this Warrant are used only for convenience and are not to be considered in construing or interpreting this Warrant. All references in this Warrant to sections and exhibits shall, unless otherwise provided, refer to sections hereof and exhibits attached hereto, all of which exhibits are incorporated herein by this reference.

12. **NOTICES.** Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (i) at the time of personal delivery, if delivery is in person; (ii) one (1) Business Day after deposit with an express overnight courier for United States deliveries, or two (2) Business Days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; (iii) three (3) Business Days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries when addressed to the party to be notified and, in case of Holder, at the address set forth on the signature page hereto, or, in the case of the Company, at the address first set forth above, or at such other address as Holder or the Company

may designate by written notice to the other party, or (iv) upon email transmission to the address set forth on the signature page hereto, or at such other address as Holder or the Company may designate by written notice to the other party.

13. **AMENDMENT; WAIVER.** Any term of this Warrant may be amended, and the observance of any term of this Warrant may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and Holder. Any amendment or waiver effected in accordance with this Section shall be binding upon Holder, each future holder of the Securities, and the Company.

14. **SEVERABILITY.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

15. **TERMS BINDING.** By acceptance of this Warrant, Holder accepts and agrees to be bound by all the terms and conditions of this Warrant.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Warrant as of the date first above written.

COMPANY:

Heliogen, Inc.

By:	/s/ Bill Gross
Name:	Bill Gross
Title:	CEO
Email:	bill@heliogen.com
Address:	130 West Union Street
	Pasadena, CA 91103

HOLDER:

Woodside Energy (USA), Inc.

By:	/s/ Thomas Feutrill
Name:	Thomas Feutrill
Title:	Director
Email:	tom.feutrill@woodside.com.au
Address:	3040 Post Oak Boulevard
	Suite 1800-0134 Houston, Texas 77056

EXHIBIT 1

FORM OF SUBSCRIPTION
(To be signed only upon exercise of Warrant)

To: **Heliogen, Inc.**

(1) The undersigned Holder hereby elects to purchase _____ shares of Class A Common Stock of Heliogen, Inc., a Delaware corporation (the "***Warrant Stock***"), pursuant to the terms of the attached Warrant, and [CASH PAYMENT: tenders herewith payment of the Purchase Price in full, together with all applicable transfer taxes, if any.] [NET ISSUANCE: elects pursuant to Section 2.9 of the Warrant to effect a net exercise.]

(2) In exercising the Warrant, the undersigned Holder hereby confirms and acknowledges that the representations and warranties set forth in Section 7 of the Warrant as they apply to the undersigned Holder continue to be true and correct as of this date.

(3) Please issue a certificate or certificates representing such shares of Warrant Stock in the name specified below:

_____
(Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Federal Tax Identification Number)

HOLDER:

Woodside Energy (USA), Inc.

Signature:_____

Name: _____

Title: _____

Date: _____

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13A-14(A) AND 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Bill Gross, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2022 of Heliogen, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 23, 2022

By: /s/ Bill Gross
Bill Gross
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13A-14(A) AND 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Christiana Obiaya, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2022 of Heliogen, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 23, 2022

By: /s/ Christiana Obiaya
Christiana Obiaya
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002

In connection with this Quarterly Report on Form 10-Q for the period ended March 31, 2022 of Heliogen, Inc. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bill Gross, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 23, 2022

By: /s/ Bill Gross
Bill Gross
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002

In connection with this Quarterly Report on Form 10-Q for the period ended March 31, 2022 of Heliogen, Inc. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christiana Obiaya, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 23, 2022

By: /s/ Christiana Obiaya
Christiana Obiaya
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)