# SECURITIES AND EXCHANGE COMMISSION

# FORM 8-K

Current report filing

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# **FILER**

# **PLUG POWER INC**

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

# FORM 8-K

# **CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 6, 2021

# Plug Power Inc.

(Exact name of registrant as specified in its charter)

Delaware	1-34392	22-3672377
(State or other jurisdiction	(Commission File	(IRS Employer
of incorporation)	Number)	Identification No.)
968 Albany Shaker Road,		
Latham, New York		12110
(Address of principal executive office	ces)	(Zip Code)
(	,	(—-r)
Registrant's tele	ephone number, including area cod	e: (518) 782-7700
	N/A	
(Former nam	ne or former address, if changed sin	nce last report.)
Check the appropriate box below if the Form 8-K any of the following provisions (see General Instr		y satisfy the filing obligation of the registrant under
☐ Written communications pursuant to Rule 425	under the Securities Act (17 CFR 2	230.425)
☐ Soliciting material pursuant to Rule 14a-12 und	ler the Exchange Act (17 CFR 240	).14a-12)
☐ Pre-commencement communications pursuant	to Rule 14d-2(b) under the Exchan	age Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant	to Rule 13e-4(c) under the Exchan	ge Act (17 CFR 240.13e-4(c))
Securities registered pursuant to 12(b) of the Act:		
Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	PLUG	The Nasdaq Capital Market
Indicate by check mark whether the registrant is a §230.405 of this chapter) or Rule 12b-2 of the Se		

Emerging growth company □

omplying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. $\Box$	
em 1.01 Entry Into a Material Definitive Agreement.	
tock Purchase Agreement	
On January 6, 2021, Plug Power Inc. (the "Company") entered into a Stock Purchase Agreement (the "Purchase Agreement in Grove Energy Capital LLC ("Grove Energy"), Plutus Capital NY, Inc. and SK E&S Americas, Inc., each of which is a subfact Holdings Co., Ltd. ("SK Holdings"), in connection with a strategic partnership. Pursuant to the Purchase Agreement, the company agreed to sell to Grove Energy 51,428,119 shares (subject to adjustment, the "Shares") of the Company's common strate \$0.01 per share (the "Common Stock"), at a purchase price of \$29.2893 per share or an aggregate purchase price of approximately 9.9% of the issued and outstanding as of January 5, 2021, onergy is expected to own approximately 9.9% of the issued and outstanding Common Stock immediately following the Investments.	sidiary ock, par oximately Grove
The Purchase Agreement contains customary representations, warranties and covenants and conditions to closing of the vestment (the "Closing"), including receipt of all approvals or the termination or expiration of all waiting periods required un oplicable antitrust laws. The Purchase Agreement may be terminated by either the Company or Grove Energy if the Closing has courred by March 5, 2021, subject to extension to April 2, 2021 in the event antitrust approval has not been obtained.	
Simultaneous with the execution of the Purchase Agreement, the Company and SK E&S Co., Ltd. ("SK E&S") entered in onbinding Asia JV Framework Agreement ("JV Agreement") with respect to a potential joint venture in Asia to bring hydrogolutions to Korea, China and Vietnam (the "Proposed Asia JV"). The JV Agreement, which is non-binding, outlines certain prims for the Proposed Asia JV. The Purchase Agreement provides that the parties will negotiate exclusively with one another fighteen months with respect to the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreements for the Proposed Asia JV with the objective of executing definitive agreement agreemen	en incipal or up to
vestor Agreement	
In connection with the Investment, the Company, Grove Energy, SK Holdings and SK E&S will enter into an Investor Agnee "Investor Agreement") providing for certain rights and restrictions relating to the Investment.	greement
Board Representation. The Investor Agreement provides that Grove Energy will be entitled to designate one person (the resignee") to be appointed to the Company's Board of Directors (the "Board"). The SK Designee will be an individual selected rove Energy who is reasonably acceptable to the Board and otherwise meets the requirements for serving on the Board. The St Designee will be appointed to the Board effective as of the Closing for a term expiring at the Company's 2023 annual meeting to ockholders. Grove Energy will have the right to require the Board to nominate a SK Designee for election to the Board by the ockholders of the Company at subsequent annual stockholder meetings until the earliest of (i) the date on which Grove Energy diliates beneficially own less than 4.0% of the issued and outstanding Common Stock, (ii) the second anniversary of the Closic vent that the parties to the JV Agreement have not entered into a definitive joint venture agreement with respect to the Propose V (the "Definitive Asia JV Agreement"), and (iii) any expiration or termination of the Definitive Asia JV Agreement (the "Director").	I by K of y and ng in the ed Asia
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Standstill Obligations. The Investor Agreement provides that Grove Energy, SK Holdings, SK E&S and their respective affiliates ("SK Parties") will be subject to a standstill provision until the later of (i) the expiration of the Director Period, (ii) the second anniversary of the Closing, and (iii) the date on which Grove Energy and affiliates beneficially own less than 5.0% of the issued and outstanding Common Stock (the "Standstill Period"). During the Standstill Period, the SK Parties will not, among other things and

subject to specified exceptions: (a) acquire any securities of the Company (except for purchases of Common Stock in the public market to the extent necessary to reverse any decrease in such parties' percentage ownership of the issued and outstanding Common Stock resulting solely from a net increase in the number of shares of issued and outstanding Common Stock); (b) propose any merger, consolidation, business combination, tender offer or similar transaction involving the Company; (c) solicit proxies or consents to vote any securities of the Company; (d) form, join or participate in any group (as such term is used in the rules of the Securities and Exchange Commission (the "SEC")); or (e) seek to call a meeting of the stockholders of the Company or propose any matter to be voted upon by the stockholders of the Company.

Transfer Restrictions. The Investor Agreement also provides that, for a period ending on the second anniversary of the Closing, the SK Parties will be prohibited from transferring any Common Stock. If immediately following the second anniversary of the Closing, either (i) the Director Period remains in effect or (ii) the Definitive Asia JV Agreement has been executed and remains in effect, then, until the third anniversary of the Closing, the SK Parties may transfer a number of shares of Common Stock not exceeding, in the aggregate in any 90-day period, 2.0% of the issued and outstanding shares of Common Stock as of the first date in such 90-day period. If immediately following the second anniversary of the Closing, both (i) the Director Period has ended and (ii) the Definitive Asia JV Agreement has not been executed or otherwise is not in effect, then the SK Parties may transfer any amount of Common Stock. From and after the third anniversary of the Closing, the SK Parties may transfer any amount of Common Stock. The SK Parties will also be generally prohibited from transferring Common Stock to (a) any competitor of the Company (as determined by the Board) or (b) any person that together with its affiliates would, after giving effect to such transfer, beneficially own 5.0% or more of the issued and outstanding Common Stock.

Voting Obligations. The Investor Agreement also provides that, during the Standstill Period, Grove Energy will vote all of its shares of Common Stock (i) for all Board-recommended director nominees and (ii) on each other matter brought to a vote of the Company's stockholders, in accordance with the recommendation of the Board on such matter. Under the Investor Agreement, Grove Energy has granted a proxy to the Company to vote all such shares of Common Stock in the event that it does not vote such shares at least ten (10) days prior to the date of any meeting of stockholders.

*Registration Rights.* The Investor Agreement includes customary resale shelf registration rights for Grove Energy that require the Company to register the Common Stock held by Grove Energy for resale.

The foregoing description of the Purchase Agreement, the Investor Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Purchase Agreement (including the form of Investor Agreement attached as an exhibit thereto), which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

The Purchase Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company and its subsidiaries and affiliates. The representations and warranties contained in the Purchase Agreement were made only for purposes of the Purchase Agreement (together with the exhibits thereto) and as of specific dates, are solely for the benefit of the parties to the Purchase Agreement, may be subject to limitations agreed upon by the contracting parties, may have been made for the purposes of allocating contractual risk between the parties to the Purchase Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries to the representations and warranties contained in the Purchase Agreement and should not rely on the representations and warranties or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

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#### Item 3.02 Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Purchase Agreement and the Investment is incorporated herein by reference. The Company will offer and sell the Shares in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"). The Company will rely on this exemption from registration based in part on representations made by Grove Energy in the Purchase Agreement.

#### Item 7.01 Regulation FD Disclosure.

On January 6, 2021, the Company issued a press release with respect to the strategic partnership and the Investment. A copy of the press release is furnished herewith as Exhibit 99.1.

The information included in this Item 7.01 and Exhibit 99.1 of this Current Report are not deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor shall this item and Exhibit 99.1 be incorporated by reference into the Company's filings under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such future filing.

#### **Forward-Looking Statements**

This Current Report on Form 8-K contains forward-looking statements within the meaning of the federal securities laws. These statements include, but are not limited to, statements regarding a strategic partnership with the SK Parties, including the Investment and the Proposed Asia JV. These forward-looking statements are made as of the date hereof and are based on current expectations, estimates, forecasts and projections as well as the beliefs and assumptions of management. Forward-looking statements are subject to a number of risks and uncertainties, many of which involve factors or circumstances that are beyond the Company's control. The Company's actual results could differ materially from those stated or implied in forward-looking statements due to a number of factors, including, but not limited to, the risks related to the satisfaction of the conditions to the Closing, the successful entry into a definitive joint venture agreement with respect to the Proposed Asia JV in the anticipated timeframe or at all, the risks related to the ability of the joint venture to bring hydrogen solutions to Asia, and the risks related to market risks and uncertainties generally, including the impact of any natural disasters or public health emergencies such as the COVID-19 pandemic. These and other potential risks and uncertainties that could cause actual results to differ from the results predicted are more fully detailed in the Company's filings and reports with the SEC, including the Annual Report on Form 10-K for the year ended December 31, 2019, as amended and supplemented by the Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020, June 30, 2020 and September 30, 2020, as well as other filings and reports that are filed by the Company from time to time with the SEC. The Company disclaims any obligation to update forward-looking statements.

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#### Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Title
10.1	Stock Purchase Agreement, dated January 6, 2021, by and among the Company, Grove Energy Capital LLC, Plutus Capital NY, Inc. and SK E&S Americas, Inc.
<u>99.1</u>	Press Release of Plug Power Inc., dated January 6, 2021.
104	Cover Page Interactive Data File (embedded with the Inline XBRL document).
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#### **SIGNATURE**

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 hereunto duly authorized.

Plug Power Inc.

Date: January 7, 2021 By: <u>/s/ Paul Middleton</u>

Name: Paul Middleton Title: Chief Financial Officer

# STOCK PURCHASE AGREEMENT

# By and Among

# GROVE ENERGY CAPITAL LLC,

# PLUTUS CAPITAL NY, INC.,

# SK E&S AMERICAS, INC.,

# AND

# PLUG POWER INC.

# Dated as of January 6, 2021

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#### STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "**Agreement**"), dated as of January 6, 2021, by and among Grove Energy Capital LLC (the "**Investor**"), a Delaware limited liability company, with its principal place of business at 55 East 59<sup>th</sup> St. 11<sup>th</sup> Fl., New York, NY 10022, Plutus Capital NY, Inc. ("**Plutus**"), a Delaware corporation, with its principal place of business at 55 East 59<sup>th</sup> St. 11<sup>th</sup> Fl., New York, NY 10022, SK E&S Americas, Inc. ("**SK E&S Americas**"), a Delaware corporation, with its principal place of business at 1980 Post Oak Blvd. Suite 2000, Houston, TX 77056 (Plutus and SK E&S Americas, together, the "**Guarantors**"), and Plug Power Inc. (the "**Company**"), a Delaware corporation, with its principal place of business at 968 Albany Shaker Road, Latham, NY 12110. Each of the Investor, Guarantor and the Company is referred to in this Agreement as a "**party**" and together as the "**parties**."

WHEREAS, pursuant to the terms and subject to the conditions set forth in this Agreement, the Company desires to issue and sell to the Investor, and the Investor desires to subscribe for and purchase from the Company, certain shares of common stock, par value \$0.01 per share, of the Company (the "Common Stock"); and

WHEREAS, the Investor is wholly owned by Plutus as of the date hereof and will be, directly or indirectly, wholly owned by Plutus and SK E&S Americas as of the Closing, Plutus is directly wholly owned by SK Holdings Co., Ltd. ("SK Holdings"), and SK E&S Americas is directly wholly owned by SK E&S Co., Ltd. ("SK E&S"), and the Guarantors desire to, jointly and severally, guarantee the obligations of the Investor under this Agreement.

NOW, THEREFORE, in consideration of the following mutual promises and obligations, and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Investor and the Company agree as follows:

#### 1. Definitions.

1.1 <u>Defined Terms</u>. When used in this Agreement, the following terms shall have the respective meanings specified therefor below:

"Affiliate" shall mean, with respect to any Person, another Person that controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the generality of the foregoing, a Person shall be deemed to control another Person if any of the following conditions is met: (i) in the case of corporate entities, direct or indirect ownership of more than fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of more than fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities. Notwithstanding anything to the contrary, the Affiliates of the Investor, the Guarantors, SK Holdings and SK E&S shall only mean the Investor, the Guarantors, SK Holdings, SK E&S and any Subsidiaries of SK E&S in which SK E&S owns more than fifty percent (50%) of the equity interest. For the purposes of this Agreement, in no event shall the Investor or any of its Affiliates be deemed Affiliates of the Investor or any of its Affiliates, nor shall the Company or any of its Affiliates be deemed Affiliates of the Investor or any of its Affiliates.

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"Business Day" shall mean a day on which commercial banking institutions in New York, New York and Seoul, the Republic of Korea are open for business.

"Competitor" shall have the meaning set forth in Section 1 of the Investor Agreement.

"Cross Receipt" shall mean an executed document signed by each of the Company and the Investor, in substantially the form of Exhibit A attached hereto.

"Effect" shall have the meaning set forth in the definition of "Material Adverse Effect."

"Governmental Authority" shall mean any court, agency, authority, department or other instrumentality of any government or country or of any national, federal, state, provincial, regional, county, city or other political subdivision of any such government or country or any supranational organization of which any such country is a member.

"Indirect Transfer" shall have meaning set forth in Section 1 of the Investor Agreement.

"Investor Agreement" shall mean that certain Investor Agreement by and among the Investor, SK Holdings, SK E&S and the Company, to be dated as of the Closing Date, in substantially the form of Exhibit B attached hereto, as the same may be amended from time to time.

"Joint Venture Agreement" shall mean the definitive joint venture agreement and the definitive stockholder agreement (or similar agreements) establishing the joint venture contemplated by the Nonbinding Asia JV Framework Agreement dated the date hereof.

<sup>&</sup>quot;Agreement" shall have the meaning set forth in the Preamble, including all Exhibits attached hereto.

"Law" or "Laws" shall mean all laws, statutes, rules, regulations, orders, judgments, injunctions and/or ordinances of any Governmental Authority.

"Letter Agreement" shall mean that certain Letter Agreement to be entered into by and among SK Holdings, SK E&S and the Company pursuant to Section 3.2(a), in substantially the form of Exhibit D attached hereto, as the same may be amended from time to time.

"Material Adverse Effect" shall mean any change, event or occurrence (each, an "Effect") that, individually or when taken together with all other Effects, has had, or would reasonably be expected to have, either alone or in combination with all other Effects, (i) a material adverse effect on the business, financial condition, results of operations or prospects of the Company and its Subsidiaries, taken as a whole, or (ii) a material adverse effect on the Company's ability to perform its obligations, or consummate the Transaction, in accordance with the terms of the Transaction Agreements, except in the case of (i) or (ii) to the extent that any such Effect results from or arises out of: (A) changes in economic conditions generally or capital and financial markets generally, including changes in interest or exchange rates, (B) changes in legal, regulatory, political, economic or business conditions or changes in generally accepted accounting principles in the United States or interpretations thereof that, in each case, generally affect the industry in which the Company and its Subsidiaries operate, (C) the announcement, pendency or performance of the Transaction Agreements or the Joint Venture Agreement, or the consummation of the Transaction or the identity of the Investor, (D) any change in the trading prices or trading volume of the Company Stock or any failure to meet internal projections or forecasts or published revenue or earnings projections of industry analysts, (E) acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism, (F) earthquakes, hurricanes, floods or other natural disasters, pandemics or other health crises, including but not limited to the COVID-19 pandemic, or (G) any action taken by the Company in accordance with the Transaction Agreements or the Joint Venture Agreement or with the Investor's written consent (it being understood that, in each case, the facts giving rise to or contributing to any such change may be deemed to constitute, or be taken into account when determining whether there has been or will be, a Material Adverse Effect, except to the extent any of such facts is an Effect referred in clauses (A) through (G) of this definition). Notwithstanding the foregoing, any Effects referred to in clauses (A), (B), (D), (E) or (F) shall be taken into account in determining whether there has been or will be, a Material Adverse Effect to the extent such Effect has a materially disproportionate adverse effect on the Company and its Subsidiaries (taken as a whole) relative to other participants in the industry in which the Company and its Subsidiaries operate.

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"Organizational Documents" shall mean (i) the Amended and Restated Certificate of Incorporation of the Company dated as of October 28, 1999, as amended through the date of this Agreement and (ii) the Third Amended and Restated Bylaws of the Company, as amended through the date of this Agreement.

"Person" shall mean any individual, partnership, limited liability company, firm, corporation, trust, unincorporated organization, government or any department or agency thereof or other entity, as well as any syndicate or group that would be deemed to be a Person under Section 13(d)(3) of the Exchange Act.

"Representatives" shall mean, with respect to any Person, its officers, directors, principals, partners, managers, members, employees, consultants, agents, financial advisors, investment bankers, attorneys, accountants, potential debt and equity financing sources (excluding any co-investors and any purchasers in an Indirect Transfer), and other representatives. For the avoidance of doubt, potential debt and equity financing sources are Representatives, whether or not the Investor contacts any one of them before or after the Closing Date.

"Subsidiary" shall mean, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

"Third Party" shall mean any Person (other than a Governmental Authority) other than the Investor, the Guarantors, the Company or any Affiliate of the Investor, the Guarantors or the Company.

"**Transaction**" shall mean the issuance and sale of the Shares by the Company, and the purchase of the Shares by the Investor, in accordance with the terms hereof.

"Transaction Agreements" shall mean this Agreement, the Letter Agreement and the Investor Agreement.

# 1.2 <u>Additional Defined Terms</u>

. In addition to the terms defined in Section 1.1, the following terms shall have the respective meanings assigned thereto in the sections indicated below:

<u>Defined Term</u>	Section
Additional Shares	Section 2.2
Agreement	Preamble
Closing	Section 3.1
Closing Date	Section 3.1
Company Securities	Section 4.2(c)
Common Stock	Preamble
Company	Preamble
Company SEC Documents	Section 4.11(a)
Competing Transaction	Section 10.4
Confidential Information	Section 10.9
DOJ	Section 10.3
Exchange Act	Section 4.11(a)
Excluded Shares	Section 2.2
FTC	Section 10.3
Guarantors	Preamble
HSR Act	Section 4.7
Investor	Preamble
LAS	Section 4.7
Letter Agreement Delivery Date	Section 3.2(a)
Modified Clause	Section 11.7
Nasdaq	Section 4.7
party or parties	Preamble
Permits	Section 4.10
Plutus	Preamble
Purchase Price	Section 2
SEC	Section 4.7
Securities Act	Section 4.11(a)
Share Amount	Section 2
Shares	Section 2
SK E&S	Preamble
SK E&S Americas	Preamble
SK Holdings	Preamble
Termination Date	Section 9.1(b)

#### 2. Purchase and Sale of Common Stock.

- 2.1 Purchase Price and Share Amount. Subject to the terms and conditions of this Agreement, at the Closing, the Company shall issue and sell to the Investor, free and clear of all liens, other than any liens arising as a result of any action by the Investor, and the Investor shall purchase from the Company, a number of shares of Common Stock equal to the Share Amount (the "Shares"), at a purchase price of US \$29.2893 per share (the "Purchase Price"), for an aggregate purchase price of US \$1,506,293,606 (the "Aggregate Purchase Price"). Subject to Section 2.2, the "Share Amount" shall equal 51,428,119; provided, that, in the event of any stock dividend, stock split, combination of shares or other similar change in the capital structure of the Company after the date hereof and on or prior to the Closing which affects or relates to the Common Stock, the Share Amount shall be adjusted proportionately.
- Share Amount and Purchase Price Adjustment. The Share Amount and the Aggregate Purchase Price are subject to increase pursuant to this Section 2.2. If, after the date hereof and prior to the Closing, the Company issues any Common Stock other than (i) shares of Common Stock issued upon the exercise or vesting or settlement of any options, warrants or restricted stock units outstanding as of the date hereof, or upon the conversion or redemption of the 3.75% Convertible Senior Notes due 2025 and the 5.5% Convertible Senior Notes due 2023, (ii) shares of Common Stock issued pursuant to the Company's stock option and incentive plans or other employee or director compensation plans or (iii) shares of Common Stock issued as matching contributions under the Company's 401(k) plan (collectively, "Excluded Shares"), then the Investor may, at its option, by notice to the Company at least three (3) Business Days prior to the Closing, increase the Share Amount (with a corresponding increase in the Aggregate Purchase Price) by up to a number of shares of Common Stock equal to (a) the Additional Shares divided by 0.901 minus (b) the Additional Shares. For this purpose, "Additional Shares" means a number of shares of Common Stock equal to (x) the number of shares of Common Stock issued and outstanding as of the date immediately preceding the Closing Date, minus (y) 468,047,829, minus (z) the total number of Excluded Shares.

#### 3. Closing Date; Deliveries.

3.1 <u>Closing Date</u>. Subject to the satisfaction or waiver of all the conditions to the Closing set forth in Sections 6, 7 and 8 hereof, the closing of the purchase and sale of the Shares hereunder (the "Closing") shall be held virtually by telephonic meeting on the third (3<sup>rd</sup>) Business Day after the satisfaction of the conditions to Closing set forth in Sections 6, 7 and 8 (other than those conditions that by their nature are to be satisfied at the Closing), at 10:00 a.m., Boston time, at the offices of Goodwin Procter LLP, 100 Northern Avenue, Boston, Massachusetts 02210, or at such other time, date and location as the parties may agree. The date the Closing occurs is hereinafter referred to as the "Closing Date."

#### 3.2 <u>Deliveries.</u>

- (a) <u>Deliveries prior to Closing</u>. On or prior to the date that is twenty (20) days after the date of this Agreement (the "**Letter Agreement Delivery Date**"), the Company, SK Holdings and SK E&S shall use all reasonable best efforts to execute and deliver to each other a duly executed Letter Agreement.
- (b) Deliveries by the Company. At the Closing, subject to the terms and conditions hereof, the Company shall instruct its transfer agent to deliver to the Investor the Shares via book-entry to the applicable account registered in the name of the Investor. The Company shall also deliver at the Closing: (i) a duly executed Cross Receipt; (ii) a certificate in form and substance reasonably satisfactory to the Investor and duly executed on behalf of the Company by an authorized executive officer of the Company, certifying that the conditions to Closing set forth in Section 6 of this Agreement have been fulfilled; (iii) a duly executed Investor Agreement; and (iv) a certificate of the secretary of the Company dated as of the Closing Date certifying (A) that attached thereto are true and complete copies of the Organizational Documents in effect on the Closing Date; (B) that attached thereto is a true and complete copy of all resolutions adopted by the Board of Directors of the Company authorizing the execution, delivery and performance of the Transaction Agreements and the Transaction and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby as of the Closing Date; and (C) as to the incumbency and specimen signature of any officer of the Company executing a Transaction Agreement on behalf of the Company.

- (c) <u>Deliveries by the Investor</u>. At the Closing, the Investor shall deliver, or caused to be delivered, to the Company the Aggregate Purchase Price by wire transfer of immediately available United States funds to an account designated by the Company. The Company shall notify the Investor in writing of the wiring instructions for such account not less than three (3) Business Days before the Closing Date. The Investor shall also deliver, or cause to be delivered, at the Closing: (i) a duly executed Cross Receipt; (ii) a certificate in form and substance reasonably satisfactory to the Company and duly executed by an authorized executive officer of the Investor certifying that the conditions to Closing set forth in Section 7 of this Agreement have been fulfilled; (iii) a duly executed Investor Agreement by the Investor, SK Holdings and SK E&S; and (iv) a certificate of the secretary of each of the Investor and the Guarantors dated as of the Closing Date certifying as to the incumbency and specimen signature of any officer executing a Transaction Agreement on behalf of the Investor and the Guarantors, as the case may be.
- 4. <u>Representations and Warranties of the Company</u>. The Company hereby represents and warrants the following to the Investor as of the date hereof (except for the representations and warranties that speak as of a specific date, which shall be made as of such date):

# 4.1 <u>Organization, Good Standing and Qualification</u>.

- (a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and corporate authority to own, lease and operate its properties and assets, to carry on its business as now conducted and as proposed to be conducted as described in the Company SEC Documents, to enter into the Transaction Agreements, to issue and sell the Shares and to carry out the other transactions contemplated by the Transaction Agreements.
- (b) The Company is qualified to transact business and is in good standing in each jurisdiction in which the character of the properties owned, leased or operated by the Company or the nature of the business conducted by the Company makes such qualification necessary, except where the failure to be so qualified would not reasonably be likely to have a Material Adverse Effect.

#### 4.2 <u>Capitalization and Voting Rights</u>.

(a) The authorized capital of the Company as of January 5, 2021 consists of: (i) 750,000,000 shares of Common Stock of which, (1) 468,047,829 shares are issued and outstanding (excluding 5,926,417 treasury shares), (2) 848,910 shares are reserved for issuance pursuant to the Company's equity incentive plans, (3) 10,191,554 shares of common stock are issuable upon the exercise of stock options outstanding on the date hereof, (4) 5,874,642 shares of common stock are issuable upon the vesting of restricted stock units, (5) 104,753,740 shares of common stock are issuable upon the exercise of warrants, (6) 69,808 shares of common stock are issuable upon conversion of the 5.50% Convertible Senior Notes due March 2023 at a conversion rate of 436.3002 shares, and (7) 42,186,802 shares of common stock are issuable upon conversion of the 3.75% Convertible Senior Notes due June 2025 at a conversion rate of 198.6196 shares, and (ii) 5,000,000 shares of preferred stock, par value \$0.01 per share, of which (1) 170,000 have been designated as Series A Junior Participating Cumulative Preferred Stock, (2) 10,431 have been designated as Series C Redeemable Convertible Preferred Stock, and (3) 35,000 have been designated as Series E Convertible Preferred Stock, none of which are issued and outstanding as of the date of this Agreement. All of the issued and outstanding shares of Common Stock (A) have been duly authorized and validly issued, (B) are fully paid and non-assessable, and (C) were issued in compliance with all applicable federal and state securities Laws. None of the issued and outstanding shares of Common Stock were issued in violation of any preemptive rights arising under the Delaware General Corporation Law or the Organizational Documents.

- (b) All of the authorized shares of Common Stock are entitled to one (1) vote per share.
- (c) Except as described or referred to in Section 4.2(a) above, as provided in the Investor Agreement, as set forth in the Company SEC Documents or as disclosed to the Investor, there are: (i) no outstanding shares of capital stock of, or other equity interests in, the Company, (ii) no outstanding securities of the Company convertible into or exchangeable for shares of capital stock of, or other equity interests in, the Company, and (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company, or that obligate the Company to issue, any capital stock of, or other equity interests in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity interests in, the Company (the items in clauses

- (i), (ii) and (iii) being referred to collectively as "Company Securities"), other than any new grants of equity awards pursuant to the Company's existing stock option plans or other employee compensation plans in the ordinary course of business or issuances of Common Stock as matching contributions under the Company's 401(k) plan.
- (d) Except as provided in the Investor Agreement, as set forth in the Company SEC Documents or the Organizational Documents, the Company is not a party to any stockholders' agreement, voting agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities or the giving of written consents by a stockholder or director of the Company.
- 4.3 <u>Subsidiaries</u>. None of the Company's Subsidiaries is a "significant subsidiary" (as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act).

#### 4.4 Authorization.

(a) All requisite corporate action on the part of the Company and its directors required by applicable Law for the authorization, execution and delivery by the Company of the Transaction Agreements and the performance of all obligations of the Company hereunder and thereunder, including the authorization, issuance and delivery of the Shares, has been taken.

- (b) This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery thereof by the other parties hereto, is a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy). The Letter Agreement and the Investor Agreement have been duly authorized by the Company and, assuming due authorization, execution and delivery thereof by the other parties thereto, upon the execution and delivery of the Letter Agreement and the Investor Agreement by the Company, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy).
- 4.5 No Defaults. The Company is not in default under or in violation of (a) its Organizational Documents, (b) any provision of applicable Law or any ruling, writ, injunction, order, Permit, judgment or decree of any Governmental Authority or (c) any agreement, arrangement or instrument, whether written or oral, by which the Company or any of its assets are bound, except, in the case of subsections (b) and (c), as would not reasonably be likely to have a Material Adverse Effect. To the knowledge of the Company under any of the foregoing, except, in the case of subsections (b) and (c), as would not reasonably be likely to have a Material Adverse Effect.
- 4.6 No Conflicts. The execution, delivery and performance of the Transaction Agreements and compliance with the provisions hereof and thereof by the Company do not and shall not: (a) violate any provision of applicable Law or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, (b) constitute a breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which the Company or any of its assets are bound or (c) violate or conflict with any of the provisions of the Company's Organizational Documents, except, in the case of subsections (a) and (b), as would not reasonably be likely to have a Material Adverse Effect.
- 4.7 <u>No Governmental Authority or Third Party Consents.</u> No consent, approval, authorization or other order of, or filing with, or notice to, any Governmental Authority or other Third Party is required to be obtained or made by the Company in connection with the authorization, execution and delivery by the Company of any of the Transaction Agreements or with the authorization, issue and sale by the Company of the Shares, except (i) such filings as may be required to be made with the Securities and Exchange Commission (the "SEC") and with any state blue sky or securities regulatory authority, (ii) as required pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act"),

and (iii) with respect to the Shares, the filing with The Nasdaq Stock Market LLC ("Nasdaq") of, and the absence of unresolved issue
with respect to, a Notification Form: Listing of Additional Shares (the "LAS").

- 4.8 <u>Valid Issuance of Shares</u>. When issued, sold and delivered at the Closing in accordance with the terms hereof for the Aggregate Purchase Price, the Shares shall be duly authorized, validly issued, fully paid and nonassessable, free from any liens, encumbrances or restrictions on transfer, including preemptive rights, rights of first refusal or other similar rights, other than as arising pursuant to the Transaction Agreements, as a result of any action by the Investor or under federal or state securities Laws.
- 4.9 <u>Litigation</u>. Except as set forth in the Company SEC Documents filed prior to the date of this Agreement, there is no action, suit, proceeding or investigation pending (of which the Company has received notice or otherwise has knowledge) or, to the Company's knowledge, threatened, against the Company or which the Company intends to initiate which has had or is reasonably likely to have a Material Adverse Effect.
- 4.10 <u>Licenses and Other Rights; Compliance with Laws</u>. The Company has all franchises, permits, licenses and other rights and privileges ("**Permits**") necessary to permit it to own its properties and to conduct its business as presently conducted and is in compliance thereunder, except where the failure to be in compliance does not and would not reasonably be likely to have a Material Adverse Effect. To the Company's knowledge, it has not taken any action that would interfere with the Company's ability to renew all such Permit(s), except where the failure to renew such Permit(s) would not reasonably be likely to have a Material Adverse Effect. The Company is and has been in compliance with all Laws applicable to its business, properties and assets, and to the products and services sold by it, except where the failure to be in compliance does not and would not reasonably be likely to have a Material Adverse Effect.

# 4.11 Company SEC Documents; Financial Statements; Nasdaq Stock Market.

- (a) Since January 1, 2019, the Company has timely filed all required reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein), and any required amendments to any of the foregoing, with the SEC (the "Company SEC Documents"). As of their respective filing dates, each of the Company SEC Documents complied in all material respects with the requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents, and no Company SEC Documents when filed or declared effective, as applicable, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (b) The financial statements of the Company included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and in its quarterly reports on Form 10-Q for the quarterly periods ended September 30, 2020, June 30, 2020, and March 31, 2020 comply as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended. Except (i) as set forth in the Company SEC Documents or (ii) for liabilities incurred in the ordinary course of business subsequent to the date of the most recent balance sheet contained in the Company SEC Documents, the Company has no liabilities, whether absolute or accrued, contingent or otherwise, other than those that would not, individually or in the aggregate, reasonably be likely to have a Material Adverse Effect.

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(c) As of the date of this Agreement, the Common Stock is listed on The Nasdaq Capital Market, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The Nasdaq Capital Market. As of the date of this

Agreement, the Company has not received any notification that, and has no knowledge that, the SEC or Nasdaq is contemplating terminating such listing or registration.

- 4.12 <u>Absence of Certain Changes</u>. Except as disclosed in the Company SEC Documents, since January 1, 2019, there has not occurred any event that has caused or would reasonably be expected to cause a Material Adverse Effect.
- 4.13 Internal Controls; Disclosure Controls and Procedures. The Company maintains internal control over financial reporting as defined in Rule 13a-15(f) under the Exchange Act. The Company has implemented the "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) required in order for the principal executive officer (or its equivalent) and principal financial officer (or its equivalent) of the Company to engage in the review and evaluation process mandated by the Exchange Act, and is in compliance with such disclosure controls and procedures in all material respects. Each of the principal executive officer and the principal financial officer of the Company has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 with respect to all reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC during the past twelve (12) months.
- 4.14 Offering. Subject to the accuracy of the Investor's representations set forth in Sections 5.6, 5.7, 5.8, 5.10 and 5.11, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement constitute transactions which are exempt from the registration requirements of the Securities Act and from all applicable state registration or qualification requirements. Neither the Company nor any Person acting on its behalf will take any action that would cause the loss of such exemption.
- 4.15 No Integration. The Company has not, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the Shares sold pursuant to this Agreement in a manner that would require the registration of the Shares under the Securities Act.

- 4.16 <u>Brokers' or Finders' Fees</u>. No broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission from the Company in connection with the transactions contemplated by the Transaction Agreements.
- 4.17 <u>Critical Technologies; TID U.S. Business</u>. The Company does not produce, design, test, manufacture, fabricate, or develop any "critical technologies" as that term is defined in 31 C.F.R. §800.215, nor is it otherwise a "TID U.S. business" as that term is defined in 31 C.F.R. §800.248.
- 5. <u>Representations and Warranties of the Investor</u>. The Investor hereby represents and warrants the following to the Company as of the date hereof (except for the representations and warranties that speak as of a specific date, which shall be made as of such date):
- 5.1 <u>Organization; Good Standing</u>. The Investor is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. The Investor has or will have all requisite power and authority to enter into the Transaction Agreements, to purchase the Shares and to perform its obligations under and to carry out the other transactions contemplated by the Transaction Agreements.
  - 5.2 Capitalization and Ownership.
    - (a) The membership interests of the Investor as of the date hereof is owned 100% by Plutus.
- (b) The authorized capital stock of SK E&S as of the date hereof consists of: 100,000,000 common stock, of which, as of the date of this Agreement, 46,401,990 common stock are issued and outstanding; and as of the date hereof, 41,761,791 (90%) of the issued and outstanding common stock of SK E&S is owned by SK Holdings.
- (c) The Investor is wholly owned by Plutus as of the date hereof and will be, directly or indirectly, wholly owned by Plutus and SK E&S Americas as of the Closing, Plutus is directly wholly owned by SK Holdings and SK E&S Americas is directly wholly owned by SK E&S. SK Holdings, SK E&S and the Guarantors (together with their respective wholly-

owned Affiliates) control the Investor and will make all decisions with respect to the Investor's investment in the Company and its ownership of the Shares.

(d) There are no outstanding options, rights or agreements of any kind relating to the issuance, sale or transfer of any capital stock or other equity securities of the Investor, Plutus or SK E&S Americas to any other person.

#### 5.3 Authorization.

All requisite corporate or other action on the part of the Investor, the Guarantors, SK Holdings and SK E&S and their respective members, principals, partners, directors, officers and stockholders required by applicable Law for the authorization, execution and delivery by the Investor, the Guarantors, SK Holdings and SK E&S of the Transaction Agreements to which they are a party and the performance of all of their obligations under the Transaction Agreements to which they are a party, including the subscription for and purchase of the Shares by the Investor, has or will have been taken as of the Closing Date. This Agreement has been duly authorized, executed and delivered by the Investor and the Guarantors and, assuming due authorization, execution and delivery thereof by the other parties hereto, is a valid and legally binding obligation of the Investor and the Guarantors, enforceable against the Investor and the Guarantors in accordance with its terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy). The Letter Agreement has been duly authorized by SK Holdings and SK E&S and the Investor Agreement has been duly authorized by the Investor, SK Holdings and SK E&S, and, assuming due authorization, execution and delivery thereof by the other parties thereto, upon the execution and delivery of the Letter Agreement by SK Holdings and SK E&S and the Investor Agreement by the Investor, SK Holdings and SK E&S, will constitute valid and legally binding obligations of the Investor, SK Holdings and SK E&S, as the case may be, enforceable against the Investor, SK Holdings and SK E&S in accordance with their terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy).

- No Conflicts. The execution, delivery and performance of the Transaction Agreements and compliance with the provisions hereof and thereof by the Investor, the Guarantors, SK Holdings and SK E&S to which they are a party do not and shall not: (a) violate any provision of applicable Law or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, (b) constitute a breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which the Investor, the Guarantors, SK Holdings and SK E&S or any of their respective assets, are bound, or (c) violate or conflict with any of the provisions of the organizational documents (including any articles or memoranda of organization or association, charter, bylaws or similar documents) of the Investor, the Guarantors, SK Holdings and SK E&S, except as would not impair or adversely affect the ability of the Investor, the Guarantors, SK Holdings and SK E&S to consummate the Transactions to which they are a party and perform their obligations under the Transaction Agreements to which they are a party.
- 5.5 <u>No Governmental Authority or Third Party Consents.</u> No consent, approval, authorization or other order of any Governmental Authority or other Third Party is required to be obtained by the Investor in connection with the authorization, execution and delivery of any of the Transaction Agreements or with the subscription for and purchase of the Shares, except as required pursuant to the HSR Act and to obtain an approval from the Bank of Korea.
- 5.6 <u>Purchase Entirely for Own Account.</u> The Shares shall be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and the Investor has no present intention of selling, granting any participation or otherwise distributing the Shares. The Investor does not have and will not have as of the Closing any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participation to a Person any of the Shares.

- 5.7 <u>Disclosure of Information</u>. The Investor has had the opportunity to review the Company SEC Documents and has received or has had full access to all the information from the Company and its management that the Investor considers necessary or appropriate for deciding whether to purchase the Shares hereunder. The Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the Company, its financial condition, results of operations and prospects and the terms and conditions of the offering of the Shares sufficient to enable it to evaluate its investment. The Investor can bear the economic risk of (x) an investment in the Shares and (y) a total loss in respect of such investment.
- 5.8 <u>Investment Experience and Accredited Investor Status</u>. The Investor is an "accredited investor" (as defined in Regulation D under the Securities Act). The Investor has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the investment in the Shares and of making an informed investment decision.
- 5.9 <u>Acquiring Person</u>. As of the date of this Agreement and immediately prior to the Closing, neither the Investor nor any of its Affiliates, beneficially owns, or will beneficially own (as determined pursuant to Rule 13d-3 under the Exchange Act without regard for the number of days in which a Person has the right to acquire such beneficial ownership and without regard to the Investor's rights under this Agreement), Common Stock or any other securities of the Company.
- Securities Act or under any state or foreign securities laws. The Investor understands that the Shares, when issued, shall be "restricted securities" under the federal securities Laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such Laws, the Shares may be resold without registration under the Securities Act only in certain limited circumstances. The Investor represents that it is familiar with Rule 144 of the Securities Act, as presently in effect. The Investor will not offer, transfer, sell, pledge or otherwise dispose of any of the Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws.
- 5.11 <u>Restrictive Legend</u>. The Investor understands that the Shares shall bear the restrictive legend, and be subject to the transfer restrictions, set forth in the Investor Agreement.
- 5.12 <u>Financial Assurances</u>. The Guarantors shall cause the Investor to have, and the Investor will have, as of the Closing Date, access to cash in an amount sufficient to pay to the Company the Aggregate Purchase Price.

- 6. <u>Investor's Conditions to Closing</u>. The Investor's obligation to purchase the Shares at the Closing is subject to the fulfillment as of such Closing of the following conditions (unless waived in writing by the Investor):
- 6.1 <u>Representations and Warranties</u>. The representations and warranties made by the Company in Section 4 hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of such dates, except to the extent such representations and warranties (i) are already qualified by materiality, MAE or words of similar import, in which case such representations and warranties shall be true and correct as of such dates in all respects or (ii) are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date.
- 6.2 <u>Covenants</u>. All covenants and agreements contained in this Agreement to be performed or complied with by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects.
- 6.3 <u>Investor Agreement</u>. The Company shall have duly executed and delivered to the Investor, pursuant to Section 3.2(b) of this Agreement, the Investor Agreement, and (subject to execution by the Investor, SK Holdings and SK E&S) such agreement shall be in full force and effect.
- 6.4 Other Deliverables. The Investor shall have received all items required to be delivered to the Investor pursuant to Section 3.2(b) of this Agreement (other than the Investor Agreement) at or prior to the Closing.
- 6.5 <u>No Material Adverse Effect</u>. From and after the date of this Agreement until the Closing Date, there shall have occurred no event that has caused or would reasonably be expected to cause a Material Adverse Effect.

- 7. <u>Company's Conditions to Closing</u>. The Company's obligation to issue and sell the Shares at the Closing is subject to the fulfillment as of such Closing of the following conditions (unless waived in writing by the Company):
- 7.1 Representations and Warranties. The representations and warranties made by the Investor in Section 5 hereof shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of such dates, except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date.
- 7.2 <u>Covenants</u>. All covenants and agreements contained in this Agreement to be performed or complied with by the Investor on or prior to the Closing Date shall have been performed or complied with in all material respects.
- 7.3 <u>Letter Agreement</u>. SK Holdings and SK E&S shall have duly executed and delivered to the Company, pursuant to Section 3.2(a) of this Agreement, the Letter Agreement, and (subject to execution by the Company) such agreement shall be in full force and effect.

- 7.4 <u>Investor Agreement</u>. The Investor, SK Holdings and SK E&S shall have duly executed and delivered to the Company, pursuant to Section 3.2(c) of this Agreement, the Investor Agreement, and (subject to execution by the Company) such agreement shall be in full force and effect.
- 7.5 Other Deliverables. The Company shall have received all items required to be delivered to the Company pursuant to Section 3.2(c) of this Agreement (other than the Investor Agreement) at or prior to the Closing.
- 8. <u>Mutual Conditions to Closing</u>. The obligations of the Investor and the Company to consummate the Closing are subject to the fulfillment as of the Closing Date of the following conditions:

#### 8.1 HSR Act

- . The filings required under the HSR Act in connection with this Agreement shall have been made and the required waiting period shall have expired or been terminated as of the Closing Date.
- 8.2 <u>No Prohibition</u>. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law (whether temporary, preliminary or permanent) that is then in effect and that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by the Transaction Agreements.
- 8.3 <u>Market Listing</u>. The Shares shall have been approved for listing on The Nasdaq Capital Market, subject to official notice of issuance.

#### 9. <u>Termination</u>.

- 9.1 <u>Ability to Terminate</u>. This Agreement may be terminated at any time prior to the Closing by:
  - (a) mutual written consent of the Company and the Investor;
- (3) Business Days after March 5, 2021 (the "Termination Date"), if the Transaction shall not have been consummated by the Termination Date; provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure to consummate the transactions contemplated hereby prior to the Termination Date; and provided further, that if on the Termination Date all of the conditions to Closing shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, which conditions shall be capable of being satisfied at such time), other than the conditions set forth in Section 8.1, then the Termination Date shall automatically be extended until April 2, 2021;

(c) either the Company or the Investor, upon written notice to the other, if any of the mutual conditions
to the Closing set forth in Section 8 shall have become incapable of fulfillment by the Termination Date and shall not have been waived
in writing by the other party; provided, however, that the right to terminate this Agreement under this Section 9.1(c) shall not be
available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure to
consummate the transactions contemplated hereby prior to the Termination Date;

- (d) the Company, upon written notice to the Investor, so long as the Company is not then in breach of its representations, warranties, covenants or agreements under this Agreement such that any of the conditions set forth in Section 6.1 or 6.2, as applicable, could not be satisfied by the Termination Date, (i) upon a breach of any covenant or agreement on the part of the Investor set forth in this Agreement, or (ii) if any representation or warranty of the Investor shall have been or become untrue, in each case such that any of the conditions set forth in Section 7.1, 7.2 or 7.4, as applicable, could not be satisfied by the Termination Date;
- (e) the Investor, upon written notice to the Company, so long as the Investor is not then in breach of its representations, warranties, covenants or agreements under this Agreement such that any of the conditions set forth in Section 7.1 or 7.2, as applicable, could not be satisfied by the Termination Date, upon a breach of any covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have been or become untrue, in each case such that any of the conditions set forth in Section 6.1, 6.2, 6.3 or 6.5, as applicable, could not be satisfied by the Termination Date; or
- (f) the Company, upon written notice to the Investor, so long as the Company is not then in breach of its representations, warranties, covenants or agreements under this Agreement such that any of the conditions set forth in Section 6.1 or 6.2, as applicable, could not be satisfied by the Termination Date, if SK Holdings and SK E&S have not delivered to the Company the duly executed Letter Agreement, pursuant to Section 3.2(a) of this Agreement by the Letter Agreement Delivery Date.
- 9.2 <u>Effect of Termination</u>. In the event of the termination of this Agreement pursuant to Section 9.1 hereof, (a) this Agreement (except for this Section 9.2 and Section 11 hereof, and any definitions set forth in this Agreement and used in such sections) shall forthwith become void and have no effect, without any liability on the part of any party hereto or its Affiliates, and (b) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made or appropriately amended to reflect the termination of the transactions contemplated hereby; provided, however, that nothing contained in this Section 9.2 shall relieve any party from liability for fraud or any intentional or willful breach of this Agreement.
- 9.3 Notwithstanding anything to the contrary in this Agreement, to the extent SK Holdings and SK E&S have not delivered to the Company the duly executed Letter Agreement pursuant to Section 3.2(a) of this Agreement by the Letter Agreement Delivery Date, the Company may, in lieu of exercising its termination right under Section 9.1(f) hereof, cause Plutus and SK E&S Americas, respectively, to become parties to the Investor Agreement (replacing SK Holdings and SK E&S, respectively) and to absolutely and unconditionally agree to fully and punctually perform and comply with all covenants, agreements and other obligations of SK Holdings and SK E&S under the Investor Agreement, provided that in such event the provisions of the Investor Agreement and this Agreement shall be revised, in good faith among the parties, to effect such intent, and provided further that the obligations of Plutus and SK E&S Americas (upon being replaced as parties for SK Holdings and SK E&S, respectively) shall be joint and several. For the avoidance of doubt, in the event SK Holdings and SK E&S are unable to obtain requisite approval from the Bank of Korea, neither Plutus nor SK E&S Americas shall be obligated to cause SK Holdings or SK E&S to, and neither SK Holdings nor SK E&S shall be obligated to, enter into the Letter Agreement or the Investor Agreement.

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#### 10. Additional Covenants and Agreements.

10.1 <u>Investor Designee</u>. Within ten (10) days after requested by the Company, the Investor shall provide the Company with the name, relevant background information and other information relating to the of the proposed Investor Designee (as defined in the Investor Agreement) as the Company may request.

- Market Listing. From the date hereof through the Closing Date, Company shall use all reasonable best efforts to (a) maintain the listing and trading of the Common Stock on The Nasdaq Capital Market and (b) effect the listing of the Shares on The Nasdaq Capital Market, including submitting the LAS to The Nasdaq Stock Market LLC no later than fifteen (15) calendar days prior to the Closing Date. In the event that Nasdaq raises any objection with respect to the ownership threshold referenced in the Director Period (as defined in the Investor Agreement), the Company will increase such ownership threshold to the lowest percentage acceptable to Nasdaq and use its reasonable best efforts to obtain approval from Nasdaq, and the parties shall modify the Investor Agreement accordingly.
- 10.3 Notification under the HSR Act. The parties shall, as soon as practicable, and, in any event, no later than ten (10) days after the date of this Agreement, file or cause to be filed with the U.S. Federal Trade Commission (the "FTC") and the U.S. Department of Justice (the "DOJ") the notifications required to be filed under the HSR Act with respect to the transactions contemplated by the Transaction Agreements. The Investor will be responsible for all filing fees associated with any notifications required to be filed under the HSR Act. The parties shall use commercially reasonable efforts to promptly obtain clearance under the HSR Act for the consummation of the transactions contemplated by the Transaction Agreements, including by requesting early termination of the HSR waiting period. The parties each agree not to take any action that will have the effect of delaying, impairing, or impeding, the early termination or expiration of the applicable waiting period under the HSR Act for the transactions contemplated by the Transaction Agreements. The parties commit to instruct their respective counsel to cooperate with each other and use commercially reasonable efforts to facilitate and expedite the expiration or termination of the applicable HSR Act waiting period at the earliest practicable date. Such commercially reasonable efforts and cooperation include, but are not limited to, counsel's undertaking (a) to promptly inform the other party of any written or oral communication received from the DOJ or the FTC; (b) to respond as promptly as reasonably practicable to any request from the DOJ or the FTC for information, documents or other materials in connection with a review of the transactions contemplated by the Transaction Agreements; (c) to provide to the other party, and permit the other party to review and comment in advance of submission, all proposed correspondence, filings, and written communications to the DOJ or the FTC with respect to the transactions contemplated by the Transaction Agreements (other than the notifications required to be filed under the HSR Act); and (d) not to participate in any substantive meeting or discussion with the DOJ or the FTC in respect of an investigation or inquiry concerning the transactions contemplated by the Transaction Agreements unless it consults with the other party in advance and, except as prohibited by applicable law or the DOJ or the FTC, gives the other party the opportunity to attend and participate therein; provided, however, that materials provided pursuant to this Section 10.3 may be redacted (x) to remove references concerning the valuation, (y) as necessary to comply with contractual arrangements, and (z) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. The parties will consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions, and proposals made or submitted by or on behalf of any party to the DOJ or the FTC, except as may be prohibited by or restricted by law. Notwithstanding anything to the contrary, nothing in this Section 10.3 or elsewhere in this Agreement, shall require the Investor or the Company, or any of their respective Affiliates to (or agree or commit to) sell, divest or otherwise dispose of, convey, license, hold separate, or otherwise restrict or limit freedom of action with respect to, any assets, business, products, rights, licenses, investments, or assets, or interests therein.

10.4 Joint Venture Agreement. For a period of eighteen (18) months following the Closing, the parties agree to work together and negotiate in good faith and use commercially reasonable efforts to enter into the Joint Venture Agreement. From the date hereof until the earliest of (a) the date that is twelve (12) months after the Closing Date (which date may be extended for an additional six (6) months upon written notice by any party), (b) the execution by the Company and SK E&S of the Joint Venture Agreement and (c) in the event the Closing does not occur, termination of this Agreement, neither the Company, the Investor or SK E&S nor any of their respective Affiliates may directly or indirectly, (i) solicit, initiate or encourage the submission of, any proposal or indication of interest relating to, (ii) participate in any discussions or negotiations regarding, or furnish to any person any non-public information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, or (iii) authorize, engage in or enter into any agreement or understanding with respect to, the formation of a joint venture for the Korea, China or Vietnam markets as contemplated in the Nonbinding Asia JV Framework Agreement dated the date hereof, an equity investment in any similar entity with respect to Korea, China or Vietnam, or any similar transaction with respect to Korea, China or Vietnam, except with the other party (or its respective Affiliates) (such equity investment or transaction, a "Competing Transaction"). For the avoidance of doubt, any equity investment or transaction for the following businesses shall not be considered a Competing Transaction: (i) natural gas reforming, CCUS (Carbon Capture Utilization and Storage), and liquefaction plant business in Korea and (ii) wholesale business of hydrogen to fuel cell power plants and refueling stations in Korea.

#### 10.5 Assistance and Cooperation.

(a) Prior to the Closing, upon the terms and subject to the conditions set forth in this Agreement, and except as set forth in Section 10.3, each of the parties agrees to use all reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using all reasonable best efforts to: (a) cause the conditions precedent set forth in Sections 6, 7 and 8 to be satisfied (including, in the case of the Company, promptly notifying the Investor of any notice from The Nasdaq Stock Market LLC with respect to the LAS); (b) obtain all necessary actions or non-actions, waivers, consents, approvals, orders and authorizations from Governmental Authorities and make all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any); and (c) obtain all necessary consents, approvals or waivers from Third Parties.

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- (b) The Company and the Investor shall each, upon request by the other, furnish the other with all information concerning itself, its Affiliates, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of the Investor, the Company or any of their respective Affiliates to any Third Party and/or any Governmental Authority in connection with the Transaction.
- (c) Subject to applicable Laws and as required by any Governmental Authority, the Company and the Investor shall each keep the other apprised of the status of matters relating to consummation of the Transaction, including promptly furnishing the other with copies of notices or other communications received by the Investor or the Company, as the case may be, or any of its Affiliates, from any Third Party and/or any Governmental Authority with respect to the Transaction.
- 10.6 Effect of Waiver of Condition to Closing. In the event that, as of the Closing, the Investor waives the condition regarding a Material Adverse Effect set forth in Section 6.5 of this Agreement, the Investor shall be deemed to have waived any right of recourse against the Company for, and agreed not to sue the Company in respect of, any and all events or inaccuracies in any representations or warranties of the Company (a) that, as of the Closing, have caused or would reasonably be expected to cause such Material Adverse Effect and (b) of which the Investor had notice in writing from the Company immediately prior to the Closing.

#### 10.7 Interim Operations of the Company.

From the date hereof until the Closing, except (a) as required by applicable Law, (b) as otherwise contemplated by this Agreement or (c) as the Investor may approve in writing, the Company shall not: (i) merge or consolidate the Company with any other Person or restructure, reorganize or completely or partially liquidate the Company or (ii) sell or otherwise dispose of any of the Company's material assets other than in the ordinary course of business.

#### 10.8 Guarantee.

(a) Each of the Guarantors hereby unconditionally and irrevocably guarantees to the Company, on a joint and several basis, the full and punctual performance of and compliance with all covenants, agreements and other obligations of the Investor, now or hereafter existing, under the Transaction Agreements, including the payment of the Aggregate Purchase Price due from the Investor under Section 5.12. Each of the Guarantors acknowledges and agrees that its liability under this Section 10.8(a) is joint and several with the Investor and, upon any breach or default by the Investor, the Company shall not be obligated to first attempt enforcement against the Investor. Each of the Guarantors hereby waives any and all defenses to enforcement of the guaranty set forth in this Section 10.8(a), now existing or hereafter arising, which may be available to such Guarantor, sureties and other secondary parties at law or in equity.

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(b) Each Guarantor, jointly and severally, represents and warrants to the Company that, as of the date of this Agreement and as of the Closing Date: (1) such Guarantor has the requisite power and authority to execute and deliver the

Transaction Agreements and to perform its obligations under the Transaction Agreements, including the obligations set forth in Section 10.8(a); (2) this Agreement has been duly authorized, executed and delivered by such Guarantor and, assuming due authorization, execution and delivery by the other parties hereto, is a valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy); (3) the Investor Agreement has been duly authorized by SK Holdings and SK E&S and, assuming due authorization, execution and delivery thereof by the other parties thereto, upon the execution and delivery of the Investor Agreement by SK Holdings and SK E&S, will constitute a valid and legally binding obligation of SK Holdings and SK E&S, enforceable against SK Holdings and SK E&S in accordance with its terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy); and (4) the execution, delivery and performance of the Transaction Agreements and compliance with the provisions hereof and thereof by the applicable Guarantor, including the Guarantor's performance under Section 10.8(a), do not (x) violate any provision of applicable Law or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, (y) constitute a breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which such Guarantor or any of its assets, are bound, or (z) violate or conflict with any of the provisions of such Guarantor's organizational documents (including any articles or memoranda of organization or association, charter, bylaws or similar documents), except as would not impair or adversely affect the ability of such Guarantor to consummate the Transactions and perform its obligations under the Transaction Agreements.

(c) Upon execution of the Letter Agreement, the Company agrees to irrevocably and unconditionally release the Existing Guarantors from each of their respective obligations, now or hereafter existing, under this Agreement, including under this Section 10.8.

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10.9 Confidentiality. The Investor, Plutus and SK E&S Americas shall, and shall cause their respective Affiliates and Representatives to, keep confidential any information (including oral, written and electronic information) concerning the Company, its subsidiaries or its Affiliates that may be furnished to the Investor, Plutus, SK E&S Americas or their respective Affiliates or Representatives by or on behalf of the Company or any of its Representatives pursuant to this Agreement (the "Confidential **Information**") and to use the Confidential Information solely in connection with the Investor's investment in the Company; provided that the Confidential Information will not include information that (a) is, was or becomes available to the public (other than as a result of a breach of any confidentiality obligation by the Investor, Plutus, SK E&S Americas or their respective Affiliates), (b) is or has been independently developed or conceived by the Investor or its Affiliates without use of the Confidential Information or (c) is or has been made known or disclosed to the Investor or its Affiliates by a Third Party without a breach of any confidentiality obligations such Third Party has to the Company that is known to the Investor or its Affiliates; provided further that, the Investor may disclose the Confidential Information (i) to its Representatives in connection with its investment in the Company, (ii) to any prospective purchaser of any shares of Common Stock from the Investor or any prospective co-investor or purchaser in connection with any Indirect Transfer and their respective Representatives, provided that (A) to the knowledge of the Investor, Plutus or SK E&S Americas, as the case may be, upon reasonable inquiry, such prospective co-investor or purchaser is not a Competitor (as defined for purposes of an Indirect Transfer) or otherwise a party to whom the Investor is not permitted to transfer Common Stock pursuant to Section 4.3 of the Investor Agreement, (B) such prospective co-investor or purchaser agrees to be bound by a customary confidentiality or non-disclosure agreement with the Investor, Plutus or SK E&S Americas, as the case may be, and agrees to bind each of its Representatives who receives any Confidential Information to also be subject to customary confidentiality or non-disclosure agreements, and (C) within seven (7) days of providing any Confidential Information to any such prospective co-investor or purchaser, the Investor, Plutus or SK E&S Americas, as the case may be, provides notice to the Company notifying such prospective co-investor or purchaser, (iii) to any of Plutus, SK E&S Americas, SK Holdings, SK E&S and their respective Representatives, in each case in the ordinary course of business (provided that the recipients of such Confidential Information are subject to a customary confidentiality and non-disclosure obligation), (iv) as may be reasonably determined by the Investor to be necessary in connection with the Investor's enforcement of its rights in connection with this Agreement, or (v) as may otherwise be required by law or legal, judicial or regulatory process, provided that (X) the Investor takes reasonable steps to minimize the extent of any required disclosure described in this clause (v) and (Y) such disclosure requirement does not arise from a breach of Section 7 of the December 11, 2020 confidentiality agreement; and provided, further, that the acts and omissions of any Person to whom the Investor may disclose the Confidential Information (and such Person's Representatives who receive any such Confidential Information) pursuant to clauses (i), (ii) and (iii) of the preceding proviso shall be attributable to the

Investor for purposes of determining the Investor's compliance with this Section 10.9, except those who have entered into a separate confidentiality or non-disclosure agreement or obligation with the Company. The confidentiality agreements dated November 15 and December 11, 2020, between the Company and SK Holdings shall terminate upon execution of the Letter Agreement, provided that Sections 6, 7, 10, 13, 14, 15 and 16 of the December 11, 2020 confidentiality agreement shall remain in full force and effect until Closing.

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10.10 Securities Law Disclosure; Publicity. No public release or announcement concerning the transactions contemplated hereby or by any other Transaction Agreement shall be issued by the Company or the Investor or the Guarantors without the prior consent of the Company (in the case of a release or announcement by the Investor or the Guarantors) or the Investor (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld, conditioned or delayed), except for any such release or announcement as may be required by securities Law or other applicable Law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investor, as the case may be, shall (to the extent permissible under applicable Law) allow the Investor or the Company, as applicable, reasonable time to comment on such release or announcement in advance of such issuance and the disclosing party shall consider the other party's comments in good faith.

#### 11. Miscellaneous.

- York shall govern this Agreement, the interpretation and enforcement of its terms and any claim or cause of action (in law or equity), controversy or dispute arising out of or related to it or its negotiation, execution or performance, whether based on contract, tort, statutory or other law, in each case without giving effect to any conflicts-of-law or other principle requiring the application of the law of any other jurisdiction. Each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the New York state and federal courts sitting in the Borough of Manhattan in the City of New York (or, if such courts lack subject matter jurisdiction, in any appropriate New York state or federal court) for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.
- 11.2 <u>Waiver</u>. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Any agreement on the part of any party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.
- 11.3 Notices. All notices, instructions and other communications hereunder or in connection herewith shall be in writing, shall be sent to the address of the relevant party set forth on Exhibit C attached hereto and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or electronic mail, upon written confirmation of receipt by facsimile, electronic mail or otherwise, (b) on the first (1<sup>st</sup>) Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth (5<sup>th</sup>) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. Any party may change its address by giving notice to the other parties in the manner provided above.

- 11.4 <u>Entire Agreement</u>. This Agreement, the Letter Agreement (once executed) and the Investor Agreement (once executed) contain the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous arrangements or understandings, whether written or oral, with respect hereto and thereto.
- 11.5 <u>Amendments</u>. No provision in this Agreement shall be modified or amended except in a writing executed by an authorized representative of each of the parties hereto.
- 11.6 <u>Headings; Nouns and Pronouns; Section References</u>. Headings in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice-versa. References in this Agreement to a section or subsection shall be deemed to refer to a section or subsection of this Agreement unless otherwise expressly stated.
- 11.7 Severability. If, under applicable Laws, any provision hereof is invalid or unenforceable, or otherwise directly or indirectly affects the validity of any other material provision(s) of this Agreement in any jurisdiction ("Modified Clause"), then, it is mutually agreed that this Agreement shall endure and that the Modified Clause shall be enforced in such jurisdiction to the maximum extent permitted under applicable Laws in such jurisdiction; provided that the parties shall consult and use all reasonable best efforts to agree upon, and hereby consent to, any valid and enforceable modification of this Agreement as may be necessary to avoid any unjust enrichment of either party and to match the intent of this Agreement as closely as possible, including the economic benefits and rights contemplated herein.
- 11.8 <u>Assignment</u>. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the Investor, the Guarantors or the Company without (a) the prior written consent of the Company in the case of any assignment by the Investor or the Guarantors or (b) the prior written consent of the Investor in the case of an assignment by the Company.
- 11.9 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 11.10 <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, and by facsimile, pdf or other electronic format, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 11.11 <u>Third Party Beneficiaries</u>. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including any creditor of any party hereto. No Third Party shall obtain any right under any provision of this Agreement or shall by reason of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against any party hereto.

- 11.12 <u>No Strict Construction</u>. This Agreement has been prepared jointly and will not be construed against either party.
- 11.13 <u>Survival of Warranties</u>. The representations and warranties of the Company, the Investor and the Guarantors contained in this Agreement shall survive the Closing for twelve (12) months, except for the representation and warranty of the Investor in Section 5.12, which shall not survive the Closing.

#### 11.14 Equitable Relief; Remedies.

(a) The parties hereby acknowledge and agree that the rights of the parties hereunder are special, unique and of extraordinary character, and that if any party refuses or otherwise fails to act, or to cause its Affiliates to act, in accordance with the provisions of this Agreement, such refusal or failure would result in irreparable injury to the Company or the Investor as the case may be, the exact amount of which would be difficult to ascertain or estimate and the remedies at law for which would not be reasonable or adequate compensation. Accordingly, if any party refuses or otherwise fails to act, or to cause its Affiliates to act, in accordance with the provisions of this Agreement, then, in addition to any other remedy which may be available to any damaged party at law or in equity, such damaged party will be entitled to seek specific performance and injunctive relief, without posting bond or other

security, and without the necessity of proving actual or threatened damages, which remedy such damaged party will be entitled to seek in any court of competent jurisdiction.

- (b) The rights, powers and remedies of the parties under this Agreement are cumulative and not exclusive of any other right, power or remedy which such parties may have under any other agreement or Law. No single or partial assertion or exercise of any right, power or remedy of a party hereunder shall preclude any other or further assertion or exercise thereof.
- 11.15 <u>Expenses</u>. Except as otherwise provided in this Agreement, each party shall pay its own fees and expenses in connection with the preparation, negotiation, execution and delivery of the Transaction Agreements. The Company shall pay all fees of its transfer agent in connection with the delivery of the Common Stock to the Investor.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

#### PLUG POWER INC.

By: /s/ Paul Middleton

Name: Paul Middleton

Title: Chief Financial Officer

#### GROVE ENERGY CAPITAL LLC

By: /s/ Hyungkyun Kwon

Name: Hyungkyun Kwon Title: CEO & President

#### PLUTUS CAPITAL NY, INC.

By: /s/ Jungho Shin

Name: Jungho Shin Title: President & CEO

#### SK E&S AMERICAS, INC.

By: /s/ Jung Myung Lee

Name: Jung Myung Lee Title: CEO & President

Signature Page to Stock Purchase Agreement

#### **EXHIBIT A**

#### FORM OF CROSS RECEIPT

#### **CROSS RECEIPT**

Plug Power Inc. hereby acknowledges receipt from Grove Energy Capital LLC on [], 2021 of US \$[], representing the purchase price for [] shares of common stock, par value \$0.01 per share, of Plug Power Inc., pursuant to that certain Stock Purchase Agreement, dated as of January 6, 2021, by and among Grove Energy Capital LLC, Plutus Capital NY, Inc., SK E&S Americas, Inc. and Plug Power Inc.
PLUG POWER INC.
By:  Name: Paul B. Middleton  Title: Chief Financial Officer
Grove Energy Capital LLC hereby acknowledges receipt from Plug Power Inc. on [], 2021 of [] shares of Common Stock, par value \$0.01 per share, of Plug Power Inc., delivered pursuant to that certain Stock Purchase Agreement, dated as of January 6, 2021, by and among Grove Energy Capital LLC, Plutus Capital NY, Inc., SK E&S Americas, Inc. and Plug Power Inc.
GROVE ENERGY CAPITAL LLC
By:  Name: Hyungkyun Kwon  Title: CEO & President
A-1
EXHIBIT B  FORM OF INVESTOR AGREEMENT
B-1
INVESTOR AGREEMENT
By and Among

GROVE ENERGY CAPITAL LLC,

SK HOLDINGS CO., LTD.,

SK E&S CO., LTD.

and

PLUG POWER INC.

Dated as of [\_\_\_\_\_], 2021 TABLE OF CONTENTS

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Exhib	bit A – Form of Irrevocable Proxy	
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#### INVESTOR AGREEMENT

THIS INVESTOR AGREEMENT (this "Agreement") is made as of [\_\_\_\_\_], 2021, by and among Grove Energy Capital LLC, a Delaware limited liability company ("Investor"), SK Holdings, Co., Ltd. a company organized under the laws of the Republic of Korea ("SK Holdings"), SK E&S Co., Ltd. a company organized under the laws of the Republic of Korea ("SK E&S"), and Plug Power Inc., a Delaware corporation (the "Company").

WHEREAS, the Stock Purchase Agreement, dated as of January 6, 2021, by and among the Investor, Plutus Capital NY, Inc., a Delaware corporation ("Plutus"), SK E&S Americas, Inc., a Delaware corporation ("SK E&S Americas"), and the Company (the "Purchase Agreement") provides for the issuance and sale by the Company to the Investor, and the purchase by the Investor, of a number of shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), equal to the Share Amount (as defined in the Purchase Agreement) (the "Purchased Shares"); and

WHEREAS, as a condition to consummating the transactions contemplated by the Purchase Agreement, the Investor, SK Holdings, SK E&S and the Company have agreed upon certain rights and restrictions as set forth herein with respect to the Purchased Shares and other securities of the Company beneficially owned by the Investor and its Affiliates, and it is a condition to the closing of the transactions contemplated by the Purchase Agreement that this Agreement be executed and delivered by the Investor, SK Holdings, SK E&S and the Company.

NOW, THEREFORE, in consideration of the premises and mutual agreements hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Definitions. As used in this Agreement, the following terms shall have the following meanings:
  - (a) "Acquisition Proposal" shall have the meaning set forth in Section 3.1(d).
- (b) "Affiliate" means, with respect to any Person, another Person which controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the generality of the foregoing, a Person shall be deemed to control another Person if any of the following conditions is met: (i) if such other Person is a corporate entity, such first Person has direct or indirect ownership of more than fifty percent (50%) of the stock or shares having the right to vote for the election of directors of such corporate entity, and (ii) if such other Person is a non-corporate entity, such first Person has direct or indirect ownership of more than fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entity. Notwithstanding anything to the contrary (except as otherwise expressly provided in Sections 6(f) and 7.13(a)), the Affiliates of the Investor, Plutus, SK E&S Americas, SK Holdings and SK E&S shall only mean the SK Parties. For purposes of this Agreement, in no event shall the Investor or any of its Affiliates be deemed Affiliates of the Company or any of its Affiliates, nor shall the Company or any of its Affiliates of the Investor or any of its Affiliates.
  - (c) "Affiliate Proxy" shall have the meaning set forth in Section 5.1 of this Agreement.
- (d) "Agreement" shall have the meaning set forth in the Preamble to this Agreement, including all Exhibits attached hereto.
- (e) "beneficial owner," "beneficially owns," "beneficial ownership" and terms of similar import used in this Agreement shall, with respect to a Person, have the meaning set forth in Rule 13d-3 under the Exchange Act (i) assuming the full conversion into, and exercise and exchange for, shares of Common Stock of all Common Stock Equivalents beneficially owned by such Person and (ii) determined without regard for the number of days within which such Person has the right to acquire such beneficial ownership.
  - (f) "Board" means the Board of Directors of the Company.

(h) "Business Day" means a day on which commercial banking institutions in New York, New York and Seoul, the Republic of Korea are open for business.

(g)

"Business Combination" shall have the meaning set forth in Section 3.1(g).

- Person is or becomes the beneficial owner (except that a Person shall be deemed to have beneficial ownership of all shares that any such Person has the right to acquire, whether such right which may be exercised immediately or only after the passage of time), directly or indirectly, of a majority of the total voting power represented by all shares of Common Stock then issued and outstanding; (ii) the Company consolidates with or merges into another corporation or entity, or any corporation or entity consolidates with or merges into the Company, other than (A) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) a majority of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person becomes the beneficial owner, directly or indirectly, of a majority of the total voting power of all shares of Common Stock then issued and outstanding or (iii) the Company conveys, transfers or leases all or substantially all of its assets to any Person other than a wholly owned Affiliate of the Company.
  - (j) "Closing Date" shall have the meaning set forth in the Purchase Agreement.

- (k) "Common Stock" shall have the meaning set forth in the Preamble to this Agreement.
- (l) "Common Stock Equivalents" means any options, warrants or other securities or rights convertible into or exercisable or exchangeable for, whether directly or following conversion into or exercise or exchange for other options, warrants or other securities or rights, shares of Common Stock.
  - (m) "Company" shall have the meaning set forth in the Preamble to this Agreement.
- (n) "Competitor" means any Person that, directly or indirectly, including through one or more Affiliates, (i) engages in a business that is competitive with the business, services and/or products of the Company or (ii) owns a controlling equity interest in any Person described under clause (i) hereof, in each case, as determined by the Board (excluding the Investor Designee, if any) acting in good faith. Notwithstanding any provision herein to the contrary, solely for any Indirect Transfer, a Person who is primarily engaged in the business of making investments shall not be considered a Competitor.
  - (o) "**Derivative**" shall have the meaning set forth in Section 3.1(a).
  - (p) "Director Conditions" shall have the meaning set forth in Section 6(b).
- (q) "Director Period" means the period commencing on the Closing Date and ending on the earlier of (i) the date immediately following a period of forty-five (45) consecutive days during which the Investor and its Affiliates beneficially own shares of Common Stock representing less than four percent (4.0%) of the shares of Common Stock then issued and outstanding, (ii) the second anniversary of the Closing Date if the Joint Venture Agreement has not been executed and delivered by all parties thereto by such date, and (iii) any expiration or termination of the Joint Venture Agreement in accordance with the terms thereof.
- (r) "Disposition" or "Dispose of" means any (i) offer, sale, contract to sell, sale of any option or contract to purchase, purchase of any option or contract to sell, grant of any option, right or warrant for the sale of, or other disposition of or transfer of any shares of Common Stock, or any Common Stock Equivalents, including, without limitation, any "short sale" or similar arrangement, or (ii) hedge, swap or any other agreement or transaction that transfers, in whole or in part, directly or indirectly, any of the economic consequence of ownership of shares of Common Stock, whether any such hedge, swap, agreement or transaction is to be settled by delivery of Common Stock, other securities, in cash or otherwise.

regulations of the SEC pr	(s) comulgated	"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and thereunder.
	(t)	"Free Writing Prospectus" shall have the meaning set forth in Section 2.4(c).
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_	government	"Governmental Authority" means any court, agency, authority, department, regulatory body or nent or country or of any national, federal, state, provincial, regional, county, city or other political or country or any supranational organization of which any such country is a member.
any equity interests in the the Investor (other than S		"Indirect Transfer" or "Indirectly Transfer" means any transfer, sale or other disposition of Plutus, SK E&S Americas or any other Affiliate of the Investor that, directly or indirectly, controls and SK E&S).
	(w)	"Investor" shall have the meaning set forth in the Preamble to this Agreement.
	(x)	"Investor Designee" shall have the meaning set forth in Section 6(a).
	(y)	"Irrevocable Proxy" shall have the meaning set forth in Section 5.1.
stockholder agreement (o Agreement dated January	_	"Joint Venture Agreement" means the definitive joint venture agreement and the definitive greements) establishing the joint venture contemplated by the Nonbinding Asia JV Framework
or ordinances of any Gov	(aa) ernmental	"Law" or "Laws" means all laws, statutes, rules, regulations, orders, judgments, injunctions and/Authority.
	(bb)	"Lock-Up Term" shall have the meaning set forth in Section 4.1(a).
	(cc)	"Offeror" shall have the meaning set forth in Section 3.1(d).
	(dd)	"Partial Lock-Up Term" shall have the meaning set forth in Section 4.1(b).
outstanding Common Sto issued and outstanding sh	ck benefici ares of Co	"Permitted Purchases" means purchases of Common Stock by the Investor and/or, subject to iliates, to the extent necessary to reverse any decrease in the aggregate percentage of the issued and ally owned by the Investor and its Affiliates that results solely from a net increase in the number of mmon Stock, provided that, immediately after giving effect to any such purchase, the Investor and a, in the aggregate, more than 9.9% of the then issued and outstanding Common Stock.
organization, government to be a Person under Sect		" <b>Person</b> " means any individual, partnership, firm, corporation, association, trust, unincorporated partment or agency thereof or other entity, as well as any syndicate or group that would be deemed by of the Exchange Act.
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	(gg)	"Plutus" shall have the meaning set forth in the Preamble to this Agreement.
	(hh)	"Prospectus Supplement" shall have the meaning set forth in Section 2.1.
shall include all Exhibits	(ii) attached th	"Purchase Agreement" shall have the meaning set forth in the Preamble to this Agreement, and ereto.

- (jj) "Purchased Shares" shall have the meaning set forth in the Preamble to this Agreement, and shall be adjusted for (i) any stock split, stock dividend, share exchange, merger, consolidation or similar recapitalization and (ii) any Common Stock issued as (or issuable upon the exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange or in replacement of, the Purchased Shares.
- (kk) "registers," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such Registration Statement or document by the SEC.
- (II) "Registrable Securities" means (i) the Purchased Shares, together with any shares of Common Stock issued in respect thereof as a result of any stock split, stock dividend, share exchange, merger, consolidation or similar recapitalization, (ii) any shares of Common Stock purchased in Permitted Purchases, and (iii) any Common Stock issued as (or issuable upon the exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange or in replacement of, the shares of Common Stock described in clauses (i) and (ii) of this definition, provided, however, that shares of Common Stock shall cease to be Registrable Securities when either (A) such shares have been disposed of in accordance with the Registration Statement, or (B) such shares may be sold under Rule 144 of the Securities Act without any limitation as to time, volume or manner of sale and without the need for the Company to comply with the current public information requirement under Rule 144(c)(1) of the Securities Act.
  - (mm) "Registration Statement" shall have the meaning set forth in Section 2.1.
- (nn) "Representatives" shall mean, with respect to any Person, its officers, directors, principals, partners, managers, members, employees, consultants, agents, financial advisors, investment bankers, attorneys, accountants, potential debt and equity financing sources (excluding any co-investors and any purchasers in an Indirect Transfer), and other representatives. For the avoidance of doubt, potential debt and equity financing sources are Representatives, whether or not the Investor contacts any one of them before or after the Closing Date.
  - (oo) "Required Period" shall have the meaning set forth in Section 2.3.
  - (pp) "Required Registration" shall have the meaning set forth in Section 2.1.

- (qq) "SEC" means the United States Securities and Exchange Commission.
- (rr) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.
  - (ss) "SK E&S" shall have the meaning set forth in the Preamble to this Agreement.
  - (tt) "SK E&S Americas" shall have the meaning set forth in the Preamble to this Agreement.
  - (uu) "SK Holdings" shall have the meaning set forth in the Preamble to this Agreement.
- (vv) "SK Parties" means the Investor, Plutus, SK E&S Americas, SK Holdings, SK E&S and any subsidiaries of SK E&S in which SK E&S owns more than fifty percent (50%) of the equity interest.
  - (ww) "Standstill Term" shall have the meaning set forth in Section 3.1.
- (xx) "**Third Party**" means any Person other than the Investor, Plutus, SK E&S Americas, SK Holdings, SK E&S, the Company or any of their respective Affiliates.
  - (yy) "Violation" shall have the meaning set forth in Section 2.7(a).

#### 2. Registration Rights.

- Required Registration. On or prior to the expiration of the Lock-Up Term, the Company shall prepare and file with the SEC, at its discretion, either (a) a Registration Statement on Form S-3ASR (or a Registration Statement on Form S-3 if it is no longer eligible to file a Registration Statement on Form S-3ASR) or (b) a prospectus supplement pursuant to Rule 424(b)(7) under the Act (the "**Prospectus Supplement**") relating to the Company's then-effective Registration Statement on Form S-3 ASR or Form S-3, in either such case covering the resale of the Registrable Securities as a secondary offering to be made on a continuous basis pursuant to Rule 415 (the "**Required Registration**"). The applicable Registration Statement (including any preliminary or final prospectus or prospectus supplement contained therein (including the Prospectus Supplement)) referenced in clause (a) or (b) is referred to herein as the "**Registration Statement**."
- 2.2 <u>Revocation of Required Registration</u>. With respect to the Required Registration, the Investor may, at any time prior to the effective date of such Registration Statement, waive the requirement to have all or any of the Registrable Securities owned by the Investor included therein by providing a written notice to the Company, in which case such Registrable Securities will not be included in such Registration Statement.

- 2.3 <u>Continuous Effectiveness of Registration Statement</u>. The Company will use its reasonable efforts to cause the Registration Statement filed pursuant to this Section 2 to be declared effective by the SEC or to become effective under the Securities Act as promptly as practicable and to keep such Registration Statement that has been declared or becomes effective continuously effective until the Investor no longer holds any Registrable Securities (the "**Required Period**").
- 2.4 <u>Obligations of the Company</u>. In connection with the Registration Statement and during the Required Period, the Company shall:
- (a) prepare and file with the SEC a Registration Statement with respect to the Registrable Securities; provided that at least ten (10) Business Days prior to filing the Registration Statement or any prospectus or any amendments or supplements thereto, the Company shall furnish to the Investor and its counsel copies of all such documents proposed to be filed, and the Investor shall have the opportunity to comment on any information that is contained therein and the Company shall consider all such comments in good faith and shall make the corrections reasonably requested by the Investor with respect to any information pertaining solely to the Investor and the plan of distribution prior to filing the Registration Statement or other documents;
- (b) prepare and file with the SEC such amendments, including post-effective amendments to the Registration Statement and/or replacement shelf registration statements and supplements to the Registration Statement and any prospectus used in connection therewith as may be necessary to keep the Registration Statement effective for the Required Period, and cause the prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such Registration Statement for the Required Period; provided that at least ten (10) Business Days prior to filing any such amendments and post-effective amendments or supplements thereto, the Company shall furnish to the Investor and its counsel copies of all such documents proposed to be filed, and promptly incorporate into a Registration Statement, prospectus supplement or post-effective amendment such information as the Investor reasonably requests should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment;
- (c) furnish to the Investor such numbers of conformed copies of such Registration Statement, and of each amendment and supplement thereto, such number of copies of the prospectus contained in or deemed part of such Registration Statement (including each preliminary prospectus and any summary prospectus) and each free writing prospectus (as defined in Rule 405 of the Securities Act) (a "Free Writing Prospectus") utilized in connection therewith and any other prospectus filed under Rule 424 under the Securities Act ) in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities;

(d) notify the Investor promptly the filing of the Registration Statement, any amendment thereto, the prospectus or any prospectus supplement related thereto or post-effective to the Registration Statement and/or replacement shelf registration statement or any Free Writing Prospectus utilized in connection therewith;
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(e) notify the Investor, promptly after the Company shall receive notice thereof, of the time when the Registration Statement becomes or is declared effective or when any amendment or supplement or any prospectus forming a part of such Registration Statement has been filed;
(f) notify the Investor promptly of any comment letter from the SEC or any request by the SEC or any other U.S. or state Governmental Authority for the amending or supplementing of the Registration Statement or prospectus or for additional information and promptly deliver to the Investor copies of any comments received from the SEC and any correspondence from and to the SEC and respond as promptly as reasonably practicable to such comments;
(g) notify the Investor promptly of any stop order suspending the effectiveness of the Registration Statement or Prospectus or the initiation of any proceedings for that purpose, and use all reasonable efforts to obtain the withdrawal of any such order or the termination of such proceedings;
(h) use all reasonable efforts to register and qualify the Registrable Securities covered by the Registration Statement under such other securities or blue sky Laws of such jurisdictions as shall be reasonably requested by the Investor, use all reasonable efforts to keep each such registration or qualification effective, including through new filings, or amendments or renewals, during the Required Period, and notify the Investor of the receipt of any written notification with respect to any suspension of any such qualification or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction at the earliest reasonable practicable date; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, except as may be required by the Securities Act;
(i) promptly notify the Investor at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in the Registration Statement or any offering memorandum or other offering document includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and promptly prepare a supplement or amendment to such prospectus or file any other required document so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of material fact or omit to state any fact necessary to make the statements therein not misleading;
(j) use all reasonable efforts to comply with all applicable rules and regulations of the SEC relating to such registration and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act, provided that the Company will be deemed to have complied with this Section 2.4(j) with respect to such earning statements if it has satisfied the provisions of Rule 158 promulgated under the Securities Act;
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(k) maintain a transfer agent and registrar for all Registrable Securities covered by such Registration Statement from and after a date no later than the effective date of such Registration Statement;
(l) notify the Investor promptly upon the happening of any event that makes any statement made in such Registration Statement or related prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in such Registration Statement, prospectus or documents so that, in the case of the Registration Statement, it will not contain an untrue statement of a material fact or omit to state a material fact

required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the prospectus, it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the

light of the circumstances under which they were made, not misleading; provided, that such notice need not include the nature or details concerning such event;

- (m) if reasonably requested by counsel to the Investor, (i) promptly incorporate in a prospectus supplement or post-effective amendment to the Registration Statement such information as the Company reasonably agrees (upon advice of counsel) is required to be included therein and (ii) make all required filings of such prospectus supplement or such post-effective amendment promptly after the Company has received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment and has agreed to their inclusion in the Registration Statement; and
- (n) cause the Registrable Securities covered by such Registration Statement to be listed on each securities exchange, if any, on which equity securities issued by the Company are then listed.
- 2.5 <u>Information</u>; Investor Covenants. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities that the Investor furnish to the Company such information regarding itself and the Registrable Securities held by it as is required by Regulation S-K Item 507 or as shall be necessary to effect the registration of the Registrable Securities. The Investor agrees that, upon receipt of any notice from the Company of the happening of an event pursuant to Section 2.4(i) hereof, the Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made. The Investor covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement.
- 2.6 Expenses. The Company will pay all expenses associated with the preparation and filing of a Registration Statement, including, without limitation, filing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities Laws and listing fees. In no event shall the Company be responsible for any discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

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2.7 <u>Indemnification.</u> In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) The Company shall indemnify and hold harmless the Investor, any underwriter (as defined in the Securities Act) for the Investor and each Person, if any, who controls the Investor or underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and the officers, directors, owners, agents and employees of such controlling Persons, against any and all losses, claims, damages or liabilities (joint or several) to which they may become subject under any securities Laws including, without limitation, the Securities Act, the Exchange Act, or any other statute or common law of the United States or any other country or political subdivision thereof, or otherwise, including the amount paid in settlement of any litigation commenced or threatened (including any amounts paid pursuant to or in settlement of claims made under the indemnification or contribution provisions of any underwriting or similar agreement entered into by the Investor in connection with any offering or sale of securities covered by this Agreement), and shall promptly reimburse them, as and when incurred, for any legal or other expenses incurred by them in connection with investigating any claims and defending any actions, insofar as any such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (each, a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in or incorporated by reference into such Registration Statement, including any preliminary prospectus or final prospectus contained therein or any free writing prospectus or any amendments or supplements thereto, or in any offering memorandum or other offering document relating to the offering and sale of such securities, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities Law, or any rule or regulation promulgated under any state securities Law, in each case arising from such Registration Statement; provided, however, the Company shall not be liable in any such case for any such loss, claim, damage, liability or action to the extent that it (A) arises out of or is based upon a Violation which occurs solely in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by the Investor; or (B) is caused by the Investor's disposition of Registrable Securities after notice from the Company pursuant to Section 2.4(g) during any period during

which the Investor is obligated to discontinue any disposition of Registrable Securities as a result of any stop order suspending the effectiveness of any Registration Statement or prospectus with respect to Registrable Securities. The Company shall pay, as incurred, any legal or other expenses reasonably incurred by any Person intended to be indemnified pursuant to this Section 2.7(a), in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Section 2.7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

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(b) The Investor shall indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the Registration Statement, each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and the officers, directors, owners, agents and employees of such controlling Persons, any underwriter, any other Investor selling securities in such Registration Statement and any controlling Person of any such underwriter or other Investor, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing Persons may become subject, under liabilities (or actions in respect thereto) which arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation: (i) arises out of or is based upon a Violation which occurs solely in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by the Investor; or (ii) is caused by the Investor's disposition of Registrable Securities after notice from the Company pursuant to Section 2.4(g) during any period during which the Investor is obligated to discontinue any disposition of Registrable Securities as a result of any stop order suspending the effectiveness of any Registration Statement or prospectus with respect to Registrable Securities. The Investor shall pay, as incurred, any legal or other expenses reasonably incurred by any Person intended to be indemnified pursuant to this Section 2.7(b), in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Section 2.7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without consent of the Investor, which consent shall not be unreasonably withheld.

(c) Promptly after receipt by an indemnified party under this Section 2.7 of notice of the commencement of any action (including any action by a Governmental Authority), such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.7, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the reasonable fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial in a material respect to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.7, but the omission so to deliver written notice to the indemnifying party shall not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.7.

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(d) In order to provide for just and equitable contribution to joint liability in any case in which a claim for indemnification is made pursuant to this Section 2.7 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 2.7 provided for indemnification in such case, the Company and the Investor shall contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in proportion to the relative fault of the Company, on the one hand, and the Investor, on the other hand; provided, however, that in any such case, no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; provided further, however, that in no event shall any contribution under this Section 2.7(d) on the part of any Investor exceed the net proceeds received by the Investor from the sale of Registrable Securities giving rise to such contribution obligation, except in the case of willful misconduct or fraud by the Investor.

Exchange Act: file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act; and (b) furnish to the Investor, so long as the Investor owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing the Investor of any rule or regulation of the SEC (exclusive of Rule 144A) which permits the selling of any Registrable Securities without registration. Legend Removal. After the expiration of the Lock-Up Term, the Company shall cause the legends set forth in Section 4.6 to be removed from the Purchased Shares, no later than two (2) Business Days from receipt of a written request from the Investor pursuant to this Section 2.9, if (a) such shares have been resold under an effective Registration Statement, (b) such shares have been or will be transferred in compliance with Rule 144 under the Securities Act, (c) such shares are eligible for resale pursuant to Rule 144(b)(1)(i) under the Securities Act without the requirement for the Company to be in compliance with the current public information required under Rule 144(c)(1) under the Securities Act as to such shares and without volume or manner-of-sale restrictions or (d) the Investor shall have provided the Company with an opinion of counsel, reasonably satisfactory to the Company, stating that such securities may lawfully be transferred without registration under the Securities Act. 3. Restrictions on Beneficial Ownership. Standstill. During the period (such period, the "Standstill Term") commencing as of the Closing and 3.1 continuing until the later of (A) the second (2<sup>nd</sup>) anniversary of the Closing Date, (B) the expiration of the Director Period, and (C) the date on which the Investor and its Affiliates beneficially own less than five percent (5.0%) of the shares of Common Stock then issued and outstanding, the Investor, SK Holdings and SK E&S shall not (and shall cause their respective Affiliates not to), except as expressly approved or invited in writing by the Company: 12 other than Permitted Purchases, directly or indirectly, acquire beneficial ownership of Common Stock and/or Common Stock Equivalents and/or any instrument that gives the Investor or any of its Affiliates the economic equivalent of ownership of an amount of securities of the Company (a "Derivative"); make a tender, exchange or other offer to acquire Common Stock and/or Common Stock (b) Equivalents; directly or indirectly, (i) seek to have called any meeting of the stockholders of the Company or (c) propose any matter to be voted upon by the stockholders of the Company, or (ii) propose or nominate for election to the Board any person whose nomination has not been approved by a majority of the Board (excluding the Designated Director, if any); (d) directly or indirectly, encourage, accept or support a tender, exchange or other offer or proposal by any other Person or group (an "Offeror") for securities of the Company (if such offer or proposal would, if consummated, result in a Change of Control of the Company, such offer or proposal is referred to as an "Acquisition Proposal"); provided, however, that from and after the filing of a Schedule 14D-9 (or successor form of Tender Offer Solicitation/Recommendation Statement under Rule 14d-9 of the Exchange Act) by the Company recommending that stockholders accept any such offer filed after such offer has commenced, the Investor shall not be prohibited from taking any of the actions otherwise prohibited by this Section 3.1(d) for so long as the Board maintains and does not withdraw such recommendation;

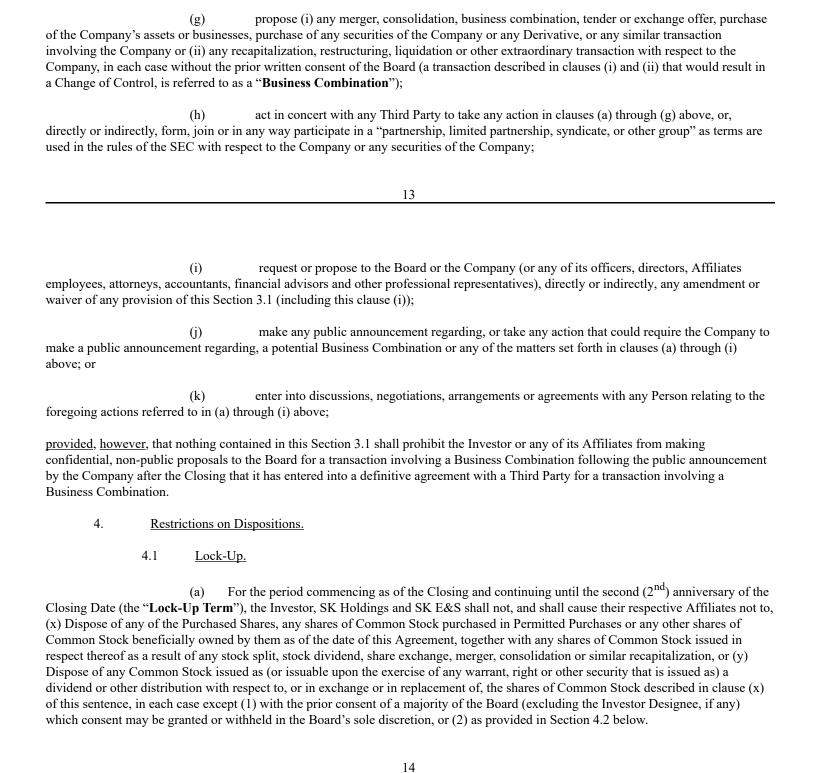
The obligations of the Company and the Investor under this Section 2.7 shall survive the

SEC Reports. With a view to making available to the Investor the benefits of Rule 144 under the Securities

completion of any offering of Registrable Securities in a Registration Statement under this Agreement and otherwise.

Act and any other rule or regulation of the SEC that may at any time permit the Investor to sell Registrable Securities of the Company to the public without registration, the Company agrees to at any time that it is a reporting company under Section 13 or 15(d) of the

(e)



solicitation (as such terms are defined in Regulation 14A under the Exchange Act), or seek to advise or influence any Person, with

to any arrangement or agreement with respect to the voting of such securities, including the granting of any proxy;

(e)

(f)

respect to voting of any securities of the Company;

directly or indirectly, solicit proxies or consents or propose or seek or become a participant in a

deposit any securities of the Company in a voting trust or subject any securities of the Company

- (b) If, as of the day immediately following the expiration of the Lock-Up Term, either (i) the Director Period remains in effect or (ii) the Joint Venture Agreement has been executed and remains in effect, then, for the period commencing on such day and continuing until the third (3<sup>rd</sup>) anniversary of the Closing Date (the "Partial Lock-Up Term"), the Investor, SK Holdings and SK E&S shall not, and shall cause their respective Affiliates not to, (x) Dispose of any of the Purchased Shares, any shares of Common Stock purchased in Permitted Purchases or any shares of Common Stock beneficially owned by them as of the date of this Agreement, together with any shares of Common Stock issued in respect thereof as a result of any stock split, stock dividend, share exchange, merger, consolidation or similar recapitalization, (y) Dispose of any Common Stock issued as (or issuable upon the exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange or in replacement of, the shares of Common Stock described in clause (x) of this sentence, except (1) with the prior consent of a majority of the Board (excluding the Investor Designee, if any) which consent may be granted or withheld in the Board's sole discretion, (2) as provided in Section 4.2 below, or (3) subject to Section 4.3, Dispositions of Common Stock that do not exceed, in the aggregate in any 90-day period, a number of shares equal to two percent (2.0%) of the number of shares of Common Stock issued and outstanding as of the first date in such 90-day period; provided that such Dispositions under this clause (3) shall not exceed, in the aggregate during the Partial Lock-Up Term, a number of shares equal to eight percent (8.0%) of the shares of Common Stock issued and outstanding as of the first date of the Partial Lock-Up Term. From and after expiration of the Partial Lock-Up Term, the Investor, SK Holdings, SK E&S and their respective Affiliates may transfer or dispose of any amount of Common Stock.
- (c) If, as of the day immediately following the expiration of the Lock-Up Term, both (i) the Director Period has ended and (ii) the Joint Venture Agreement has not been executed or otherwise is not in effect, then from and after such day and subject to Section 4.3, the Investor, SK Holdings, SK E&S and their respective Affiliates may transfer or dispose of any amount of Common Stock.

# 4.2 Certain Dispositions During Lock-Up.

- (a) <u>Disposition in Tender Offer.</u> Notwithstanding Section 4.1, the Investor and its Affiliates may, at any time, Dispose of Common Stock into (i) a tender offer by a Third Party which is not opposed by the Board (but only after the Company's filing of a Schedule 14D-9, or any amendment thereto, with the SEC disclosing the recommendation of the Board with respect to such tender offer), unless Investor, SK Holdings or SK E&S is then in breach of its obligations pursuant to Section 3.1 with respect to the tender offer or (ii) an issuer tender offer by the Company.
- (b) <u>Required Disposition</u>. Notwithstanding Section 4.1 but subject to Section 4.3, the Investor and its Affiliates may, at any time, Dispose of any of the Purchased Shares, any shares of Common Stock purchased in Permitted Purchases or any other shares of Common Stock beneficially owned by them to the extent the Investor or its Affiliates is ordered or otherwise required to do so by any Law or Governmental Authority. The Company shall use its reasonable best efforts to cooperate with the Investor and its Affiliates to facilitate any such disposition described in this Section 4.2(b).
- 4.3 <u>Certain Dispositions and Indirect Transfers.</u> Notwithstanding Section 4.1, in no event shall the Investor, SK Holdings or SK E&S (and the Investor, SK Holdings and SK E&S shall cause their respective Affiliates not to), at any time, Dispose of any Common Stock to (a) any Competitor or (b) any Person that, to the knowledge of Investor after reasonable inquiry, after giving effect to such Disposition, would, together with such Person's Affiliates, beneficially own five percent (5.0%) or more of the shares of Common Stock issued and outstanding at the time of such Disposition; provided, however, that the restrictions in this sentence shall not apply to any Disposition of Common Stock in an unsolicited open market transaction. Notwithstanding anything herein to the contrary, the Investor, SK Holdings and SK E&S shall cause their respective Affiliates not to), at any time, effect an Indirect Transfer unless (i) the Indirect Transfer is to a Person that is not a Competitor (as defined for purposes of an Indirect Transfer), and (ii) after giving effect to such Indirect Transfer, (x) SK Holdings and/or SK E&S (together with their respective wholly-owned Affiliates) own at least a majority of the outstanding equity interests in the Investor, and (y) SK Holdings and/or SK E&S (together with their respective wholly-owned Affiliates) control the Investor to make decisions with respect to its investment in the Company. The Investor shall provide advance notice of each Indirect Transfer to the Company, including the identity of each Person acquiring an interest in the Investor or the relevant Affiliate.

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4.4 <u>Effect of Prohibited Disposition.</u> If any Disposition or Indirect Transfer is made or attempted contrary to the provisions of this Agreement, (a) such purported Disposition shall be void ab initio, (b) the Company shall have, in addition to all other legal or equitable remedies that it may have, the right to injunctive relief and specific performance to enforce the provisions of this

Agreement, and (c) the Company shall have the right to refuse to recognize any transferee in a Disposition as a stockholder for any purpose.

## 4.5 <u>Compliance with Laws</u>.

- (a) Notwithstanding any other provision of this Article 4, the Investor, SK Holdings and SK E&S acknowledges and agrees that the Purchased Shares may be disposed of only (1) pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or (2) pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable state and federal securities Laws.
- (b) In connection with any Disposition of Common Stock other than (1) pursuant to an effective registration statement, (2) to the Company or (3) pursuant to Rule 144 (provided that the Investor provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the shares may be sold pursuant to such rule), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, in form and substance reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such Common Stock under the Securities Act.
- 4.6 <u>Legends</u>. The Purchased Shares will bear restrictive instructions in substantially the following form (and a stop-transfer order may be placed against transfer of the book entries for such Purchased Shares):

THE SECURITIES REPRESENTED BY THIS BOOK ENTRY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT
OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND ARE SUBJECT TO THE INVESTOR
AGREEMENT, DATED [], 2021 AMONG THE COMPANY, GROVE ENERGY CAPITAL LLC, SK HOLDINGS CO.,
LTD., AND SK E&S CO., LTD. THE SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED,
TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN
AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS. IN THE ABSENCE OF AN EFFECTIVE
REGISTRATION STATEMENT, THE COMPANY SHALL BE ENTITLED TO REQUIRE AN OPINION OF COUNSEL
SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT THAT SUCH REGISTRATION IS NOT REQUIRED.

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4.7 Offering Lock-Up. Until the end of the Director Period, the Investor shall, if requested by the Company and an underwriter of an offering of Common Stock or other securities of the Company, agree not to Dispose of any Common Stock and/or Common Stock Equivalents for a specified period of time, such period of time not to exceed forty-five (45) days; provided that the foregoing restriction shall apply only (a) if and to the extent that all directors and executive officers of the Company and any stockholder of the Company with a board seat are subject to the same restriction for that underwritten offering by the Company and (b) if the Company has notified the Investor of any such proposed offering as soon as reasonably practicable. Such agreement shall be in writing in a form satisfactory to the Company and the underwriter(s) in such offering. The Company may impose stop transfer instructions with respect to the shares of Common Stock and/or Common Stock Equivalents subject to the foregoing restrictions until the end of the specified period of time.

# 5. <u>Voting Agreement.</u>

5.1 <u>Voting of Securities.</u> During the Standstill Term, in any vote or action by written consent of the stockholders of the Company (including, without limitation, with respect to the election of directors), the Investor shall, and shall cause its Affiliates to, vote or execute a written consent with respect to all Common Stock and other voting securities of the Company held of record or with respect to which they are entitled to vote or execute a written consent, in accordance with the recommendation of the Board. During the Standstill Term, the Investor shall, and SK Holdings and SK E&S shall cause any of their respective Affiliates that may from time to time beneficially own any Common Stock or other voting securities of the Company to, be the record holder of all shares of Common Stock and other voting securities of the Company beneficially owned by the Investor or such Affiliate, as applicable.

In furtherance of this Section 5.1, the Investor hereby irrevocably appoints the Company and any individuals designated by the Company, and each of them individually, as the attorneys, agents and proxies, with full power of substitution and re-substitution in each of them, for the Investor, and in the name, place and stead of the Investor, to vote (or cause to be voted) or, if applicable, to give consent, in such manner as each such attorney, agent and proxy or his substitute shall in its, his or her sole discretion deem appropriate or

desirable with respect to all matters, with respect to all Common Stock and other voting securities of the Company held of record by the Investor or with respect to which the Investor is or may be entitled to vote at any meeting of the Company held after the date hereof, whether annual or special and whether or not an adjourned meeting or, if applicable, to give written consent with respect thereto (the "Irrevocable Proxy"). This Irrevocable Proxy is coupled with an interest, shall be irrevocable and binding on any successor in interest of the Investor and shall not be terminated by operation of Law upon the occurrence of any event. This Irrevocable Proxy shall operate to revoke and render void any proxy as to the Common Stock or any other voting securities of the Company previously granted by the Investor. Notwithstanding the foregoing, the Irrevocable Proxy shall be effective if, at any annual or special meeting of the stockholders of the Company (or any consent in lieu thereof) and at any adjournments or postponements of any such meetings, the Investor (A) fails to appear or otherwise fails to cause any Common Stock or other voting securities of the Company which the Investor holds of record or may be entitled to vote to be counted as present for purposes of calculating a quorum, or (B) fails to vote any Common Stock or other voting securities of the Company in accordance with this Section 5.1, in each case at least ten (10) days prior to the date of such stockholders' meeting (or within ten (10) days prior to the effective time of an action to be taken by written consent in lieu of such stockholders' meeting), provided that the Company provides notice of any meeting of stockholders of the Company at least twenty (20) days prior to the date of such stockholder meeting, which notice requirement shall be deemed to be satisfied by the filing of a Form 8-K or definitive proxy statement by the Company disclosing such stockholder meeting. This Irrevocable Proxy shall terminate upon the expiration of the Standstill Term.

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In the event that SK Holdings or SK E&S or any of their Affiliates (other than Investor) from time to time own of record any Common Stock or other voting securities of the Company, SK Holdings or SK E&S (as the case may be) shall, and SK Holdings and SK E&S shall cause any such Affiliate to, promptly execute and deliver to the Company an irrevocable proxy, substantially in the form of Exhibit A attached hereto together with any changes requested by the Company as may be required by the Company's transfer agent or inspector of elections, and irrevocably appoint the Company and any individuals designated by the Company, and each of them individually, with full power of substitution and resubstitution, as its attorney, agent and proxy to vote (or cause to be voted) or to give consent with respect to, all of the Common Stock and other voting securities of the Company which such party is entitled to vote, in such manner as each such attorney, agent and proxy or his substitute shall in its, his or her sole discretion deem appropriate or desirable with respect to the matters set forth in this Section 5.1 (the "Affiliate Proxy"). SK Holdings and SK E&S acknowledge, and shall cause their Affiliates to acknowledge, that each Affiliate Proxy executed and delivered shall be coupled with an interest, shall constitute, among other things, an inducement for the Company to enter into this Agreement, shall be irrevocable and binding on any successor in interest and shall not be terminated by operation of Law upon the occurrence of any event. Such Affiliate Proxy shall operate to revoke and render void any proxy as to the Common Stock or any other voting securities of the Company previously granted by the party granting such proxy. The Investor, SK Holdings and SK E&S acknowledge and agree that it shall be a condition to any Permitted Purchase by any Affiliate of the Investor that such Affiliate execute and deliver to the Company an Affiliate Proxy, and that any purported Permitted Purchase shall be in violation of Section 3 of this Agreement if such Affiliate Proxy is not so executed and delivered upon or prior to such Permitted Purchase. Such Affiliate Proxy shall terminate upon the expiration of the Standstill Term.

#### 6. Board Composition.

(a) Subject to the terms of this Section 6, effective as of the Closing, the Board will appoint a designee of the Investor (the "Investor Designee"), reasonably acceptable to the Board, as a director of the Company for a term expiring at the Company's 2023 annual meeting of stockholders or such Investor Designee's earlier death, disability, resignation or removal. The Company and the Investor agree that [\_\_\_\_\_] shall be the initial Investor Designee. The Company agrees that, during the Director Period, the Board shall nominate the individual serving as such Investor Designee (or any individual subsequently designated by the Investor to serve as the Investor Designee) for election or re-election, as the case may be, as a director at each subsequent meeting of the Company's stockholders at which directors are to be elected, and use commercially reasonable efforts to cause the Investor Designee to be elected or re-elected, including providing the same level of support as is provided for other nominees. Upon the end of the Director Period, the Investor Designee to tender to the Board, as soon as practicable and in any event within five (5) days following the end of the Director Period, his or her resignation from the Board. During the Director Period, the Company will not decrease the size of the Board if such decrease would require the resignation of the Investor Designee.

- Designee shall (i) meet the qualifications required of all directors of the Company by the Company's Corporate Governance and Nominating Committee and those mandated by applicable Law, (ii) agree, in writing, to be bound by the terms and conditions of all of the Company's policies applicable to its directors, (iii) make such acknowledgements and enter into such agreements as the Company requires of all directors, including, without limitation, with respect to confidentiality, the Company's code of ethics, insider trading policy and Section 16 reporting procedures, and (iv) be able to dedicate sufficient time and resources for the diligent performance of the duties required of a member of the Board (the "Director Conditions"). Without limiting the foregoing, each proposed Investor Designee shall be subject to satisfaction of the criteria for Board membership established by the Company's Corporate Governance Guidelines, including the director qualification criteria thereof, as determined in the reasonable and good faith discretion of the Corporate Governance and Nominating Committee of the Board and the Board in the same manner as the Corporate Governance and Nominating Committee of the Board would consider any candidate for Board membership. The Board or the Corporate Governance and Nominating Committee of the Board will evaluate the Investor Designee for potential roles on the committees of the Board, consistent with evaluations of other directors for such positions and subject to applicable Law and the listing rules and requirements of The Nasdaq Stock Market.
- (c) If an Investor Designee resigns from the Board (whether pursuant to the Company's Majority Voting Policy or otherwise), is removed, or refuses or is unable to serve or fulfill his or her duties as a director because of death or disability, in each case prior to the expiration of the Director Period, the Investor shall have the right to select a replacement Investor Designee, reasonably acceptable to the Board and subject to compliance with the Director Conditions, and shall provide the Company with the name of and relevant background information for such replacement Investor Designee. Subject to the terms of this Section 6, within fifteen (15) days following receipt of such information and compliance with the Director Conditions, the Board will appoint such replacement Investor Designee to the Board to replace the departing Investor Designee to serve the remaining term of the departing Investor Designee, and the replacement Investor Designee shall be considered an Investor Designee for all purposes of this Section 6.

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- All confidential or proprietary information and data relating to the Company and its Affiliates (d) provided by the Company to the Investor Director shall be deemed confidential information and will be kept confidential and not disclosed to any Person outside of the Company. Notwithstanding the confidentiality obligations set forth in Section 6(b)(iii) and the foregoing, and subject to Section 7.16, the Investor Designee shall be permitted to disclose such confidential information to the executive officers and members of the Board of Directors of the Investor, Plutus, SK E&S Americas, SK Holdings and SK E&S, and their respective advisers (such as legal counsel) having a duty of confidentiality to the Investor, Plutus, SK E&S Americas, SK Holdings and SK E&S, as the case may be, provided (i) such disclosure is made on a need-to-know basis solely for the purposes of, and to the extent necessary to, monitor and make decisions regarding the Investor's investment in the Company, and (ii) that the Investor will be liable for any breach by any of such Persons of the confidentiality obligations applicable to the Investor Designee. Upon the resignation or removal of the Investor Designee from the Board and written request (including via email) from the Company, such Investor Designee shall either promptly (x) destroy all confidential information of the Company that he or she received in his or her capacity as a director in his or her possession or control and any copies thereof or (y) return to the Company all confidential information of the Company that he or she received in his or her capacity as a director in his or her possession or control and any copies thereof (but the Investor Designee need not purge electronic archives and backups), and, in either case, confirm in writing (which may be via email) to the Company that all such material has been destroyed or returned, as applicable, in compliance with this Section 6.
- (e) If any Investor Designee is an employee of, or otherwise compensated by, the Investor, SK Holdings, SK E&S or any of their respective Affiliates, such Investor Designee shall not be entitled to any compensation from the Company in connection with his or her role as a director or service on the Board or any committee. The Investor Designee will be entitled to reimbursement from the Company of out of pocket expenses in connection with his or her role as a director consistent with other directors on the Board.
- (f) Notwithstanding anything contained herein to the contrary, if the Board (or any committee thereof) shall consider (i) a proposed contract, transaction or other arrangement between the Investor, SK Holdings, SK E&S (or any of their respective Affiliates (disregarding for such purposes the penultimate sentence of the definition of "Affiliate" in Section 1(b) of this Agreement)), on the one hand, and the Company or any of its Affiliates, on the other hand, (ii) the enforcement or waiver of the rights of the Company or any of its Affiliates under any agreement between the Investor, SK Holdings, SK E&S (or any of their respective Affiliates (disregarding for such purposes the penultimate sentence of the definition of "Affiliate" in Section 1(b) of this Agreement)),

#### 7. Miscellaneous.

- 7.1 Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to the conflict of laws principles thereof that would require the application of the Law of any other jurisdiction. Each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the New York state and federal courts sitting in the Borough of Manhattan in the City of New York (or, if such courts lack subject matter jurisdiction, in any appropriate New York state or federal court) for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by Law.
- 7.2 <u>Waiver</u>. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Any agreement on the part of any party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.
- 7.3 Notices. All notices, instructions and other communications hereunder or in connection herewith shall be in writing, shall be sent to the address of the relevant party set forth on Exhibit B attached hereto and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or e mail, upon written confirmation of receipt by facsimile, e mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. Any party may change its address by giving notice to the other parties in the manner provided above.
- 7.4 Entire Agreement. This Agreement and the Purchase Agreement (including all exhibits hereto and thereto) constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous arrangements or understandings, whether written or oral, with respect hereto and thereto.
- 7.5 <u>Amendments</u>; Waivers. No provision in this Agreement shall be modified or amended except in a writing executed by an authorized representative of each of the parties hereto.
- 7.6 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall." References to days mean calendar days unless otherwise specified.

- 7.7 <u>Severability</u>. If any provision of this Agreement is invalid or unenforceable under any applicable Law, then such provision will be deemed modified in order to conform with such Law. Any provision hereof that may prove invalid or unenforceable under any Law will not affect the validity or enforceability of any other provision hereof.
- 7.8 Assignment. Neither this Agreement nor any rights or duties of a party hereto may be assigned by such party, in whole or in part, without (a) the prior written consent of the Company in the case of any assignment by the Investor, SK Holdings or SK E&S, or (b) the prior written consent of the Investor in the case of an assignment by the Company, provided that no such consent shall be required from the Investor in connection with any acquisition of the Company or a majority of the outstanding shares of Common Stock, in each case in a single or series of related transactions.
- 7.9 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 7.10 Counterparts. This Agreement may be executed in two or more counterparts, and by facsimile, pdf or other electronic format, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 7.11 <u>Fees and Expenses</u>. Except as otherwise provided herein and therein, all fees and expenses incurred in connection with or related to this Agreement and the Purchase Agreement and the transactions contemplated hereby and thereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated.
- 7.12 Third Party Beneficiaries. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party. No Third Party shall obtain any right under any provision of this Agreement or shall by reason of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against any party hereto.

## 7.13 <u>Performance of the Investor and Affiliates.</u>

(a) SK Holdings and SK E&S (i) shall each cause the Investor and each other Affiliate to comply with all of the obligations, covenants, terms, conditions and undertakings of the Investor and each such Affiliate under this Agreement in accordance with the terms hereof, and (ii) shall not, and shall cause the Investor and each other Affiliate, and each of its and their respective Representatives not to, directly or indirectly, cause, direct or knowingly encourage any Affiliate (disregarding for such purposes the penultimate sentence of the definition of "Affiliate" in Section 1(b) of this Agreement) to take or fail to take any action that, if taken by any of the SK Parties, would constitute or could reasonably be expected to constitute a breach of this Agreement.

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- (b) Each of SK Holdings and SK E&S hereby unconditionally and irrevocably guarantee to the Company, on a several and not joint basis, the full and punctual performance of and compliance with all covenants, agreements and other obligations of the Investor, now or hereafter existing, under the terms of this Agreement.
- (c) Notwithstanding anything to the contrary, the Company acknowledges that each of SK Holdings and SK E&S' liability under this Section 7.13 is limited to one-half (1/2) of the obligations of the Investor under this Agreement and/or Section 3.2(c) of the Purchase Agreement, as the case may be. Each of SK Holdings and SK E&S acknowledge and agree that upon any breach or default by the Investor, the Company shall not be obligated to first attempt enforcement against the Investor. Each of SK Holdings and SK E&S hereby waive any and all defenses to enforcement of the guaranty set forth in this Section 7.13, now existing or hereafter arising, which may be available to such party, sureties and other secondary parties at law or in equity.
- 7.14 Remedies. The rights, powers and remedies of the parties under this Agreement are cumulative and not exclusive of any other right, power or remedy which such parties may have under any other agreement or Law. No single or partial assertion or exercise of any right, power or remedy of a party hereunder shall preclude any other or further assertion or exercise thereof.

7.15 Specific Performance. Each party hereto agrees that irreparable damage would occur in the event that any of
the applicable provisions of this Agreement is not performed in accordance with their specific terms or is otherwise breached, the
amount of which would be difficult to ascertain or estimate and the remedies at law for which would not be reasonable or adequate
compensation. Accordingly, each party hereto shall be entitled to specific performance of the terms hereof, including an injunction or
injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any New
York state or federal court sitting in the Borough of Manhattan in the City of New York (or, if such courts lack subject matter
jurisdiction, in any appropriate New York state or federal court), this being in addition to any other remedy to which such party is
entitled at law or in equity. Each party hereto hereby further waives (a) any defense in any action for specific performance that a remedy
at law would be adequate and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

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Confidentiality. The Investor, SK Holdings and SK E&S shall, and shall cause their respective Affiliates and 7.16 Representatives to, keep confidential any information (including oral, written and electronic information) concerning the Company, its subsidiaries or its Affiliates that may be furnished to the Investor, SK Holdings, SK E&S or their respective Affiliates or Representatives by or on behalf of the Company or any of its Representatives pursuant to this Agreement (the "Confidential Information") and to use the Confidential Information solely in connection with the Investor's investment in the Company; provided that the Confidential Information will not include information that (a) is, was or becomes available to the public (other than as a result of a breach of any confidentiality obligation by the Investor, SK Holdings, SK E&S or their respective Affiliates), (b) is or has been independently developed or conceived by the Investor or its Affiliates without use of the Confidential Information or (c) is or has been made known or disclosed to the Investor or its Affiliates by a Third Party without a breach of any confidentiality obligations such Third Party has to the Company that is known to the Investor or its Affiliates; provided further that, the Investor may disclose the Confidential Information (i) to its Representatives in connection with its investment in the Company, (ii) to any prospective purchaser of any shares of Common Stock from the Investor or any prospective co-investor or purchaser in connection with any Indirect Transfer and their respective Representatives provided that (A) to the knowledge of the Investor, SK Holdings or SK E&S, as the case may be, upon reasonable inquiry, such prospective co-investor or purchaser is not a Competitor (as defined for purposes of an Indirect Transfer) or otherwise a party to whom the Investor is not permitted to transfer Common Stock pursuant to Section 4.3 of this Agreement, (B) such prospective co-investor or purchaser agrees to be bound by a customary confidentiality or non-disclosure agreement with the Investor, SK Holdings or SK E&S, as the case may be, and agrees to bind each of its Representatives who receives any Confidential Information to also be subject to customary confidentiality or non-disclosure agreements, and (C) within seven (7) days of providing any Confidential Information to any such prospective co-investor or purchaser, the Investor, SK Holdings or SK E&S, as the case may be, provides notice to the Company identifying such prospective co-investor or purchaser, (iii) to any SK Party and their respective Representatives, in each case in the ordinary course of business (provided that the recipients of such Confidential Information are subject to a customary confidentiality and non-disclosure obligation), (iv) as may be reasonably determined by the Investor to be necessary in connection with the Investor's enforcement of its rights in connection with this Agreement, or (v) as may otherwise be required by law or legal, judicial or regulatory process, provided that (X) the Investor takes reasonable steps to minimize the extent of any required disclosure described in this clause (v) and (Y) such disclosure requirement does not arise from a breach of Section 3 of this Agreement; and provided, further, that the acts and omissions of any Person to whom the Investor may disclose the Confidential Information (and such Person's Representatives who receive any such Confidential Information) pursuant to clauses (i), (ii) and (iii) of the preceding proviso shall be attributable to the Investor for purposes of determining the Investor's compliance with this Section 7.16, except those who have entered into a separate confidentiality or non-disclosure agreement or obligation with the Company.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

## **GROVE ENERGY CAPITAL LLC**

By:		
Dy.		

	SK HOLDINGS CO., LTD.
	By: Name: Title:
	SK E&S CO., LTD.
	By: Name: Title:
	PLUG POWER INC.
	By: Name: Title:
	Signature Page to Investor Agreement
	EXHIBIT D
	FORM OF LETTER AGREEMENT
	D-1
	LETTER AGREEMENT
THIS	<b>LETTER AGREEMENT</b> (this " <b>Agreement</b> "), is made, entered into, and effective as of this [], 2021 by and among:
(1)	SK Holdings Co., Ltd. ("SK Holdings"), a company organized under the laws of the Republic of Korea;
(2)	SK E&S Co., Ltd. ("SK E&S"), a company organized under the laws of the Republic of Korea; and
(3)	Plug Power Inc., a Delaware corporation (the "Company").
(the "S	dized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in the Stock Purchase Agreement SPA") dated January 6, 2021 entered into by and among Grove Energy Capital LLC (the "Investor"), Plutus Capital NY, Inc. ("SK E&S Americas, Inc. ("SK E&S Americas") and the Company. Plutus and SK E&S Americas shall together be referred the "Existing Guarantors"; and SK Holdings and SK E&S shall together be referred to as the "New Guarantors".

Name: Title: WHEREAS, the Investor, the Existing Guarantors and the Company entered into the SPA, which includes the Existing Guarantors' obligations under Section 10.8 of the SPA.

WHEREAS, pursuant to Section 3.2(a) of the SPA, each of the New Guarantors intend to enter into this Agreement, whereby each of the New Guarantors, severally and not jointly, guarantee to the Company the full and punctual performance of and compliance with all covenants, agreements and other obligations of the Investor under the SPA, subject to the terms of the SPA and pursuant to the terms of this Agreement.

WHEREAS, the parties to this Agreement intend to release the Existing Guarantors from all of their respective obligations under the SPA, including under Section 10.8 of the SPA.

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

#### **AGREEMENT**

## 1. <u>Guarantee by New Guarantors</u>.

- (a) Each of the New Guarantors hereby unconditionally and irrevocably guarantees to the Company, on a several and not joint basis, the full and punctual performance of and compliance with all covenants, agreements and other obligations of the Investor, now or hereafter existing, under the SPA, including the payment of the Aggregate Purchase Price due from the Investor under Section 2 of the SPA. Notwithstanding anything to the contrary, the Company acknowledges that each New Guarantor's liability under the SPA and this Agreement is limited to one-half (1/2) of the obligations of the Investor covered under the SPA such that on a combined basis the New Guarantors are guaranteeing 100% of such obligations. Each of the New Guarantors acknowledges and agrees that upon any breach or default by the Investor, the Company shall not be obligated to first attempt enforcement against the Investor. Each of the Guarantors hereby waives any and all defenses to enforcement of the guaranty set forth in this Agreement, now existing or hereafter arising, which may be available to such Guarantor, sureties and other secondary parties at law or in equity.
- (b) Each of the New Guarantors, severally and not jointly, represents and warrants to the Company that (1) such New Guarantor has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including the obligations set forth in Section 1(a) of this Agreement; (2) this Agreement has been duly authorized, executed and delivered by such New Guarantor and, assuming due authorization, execution and delivery by the other parties hereto, is a valid and binding obligation of the New Guarantor, enforceable against the New Guarantor in accordance with its terms (except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application relating to or affecting enforcement of creditors' rights and (ii) rules of Law governing specific performance, injunctive relief or other equitable remedies and limitations of public policy); (3) the execution, delivery and performance of this Agreement and compliance with the provisions hereof by such New Guarantor, including the New Guarantor's performance under Section 1(a) of this Agreement, do not (x) violate any provision of applicable Law or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, (y) constitute a breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which such New Guarantor or any of its assets, are bound, or (z) violate or conflict with any of the provisions of such New Guarantor's organizational documents (including any articles or memoranda of organization or association, charter, bylaws or similar documents), except as would not impair or adversely affect the ability of such New Guarantor to perform its obligations under this Agreement.
- 2. <u>Release of Existing Guarantors</u>. In consideration for the New Guarantors entering into this Agreement, the Company hereby agrees to irrevocably and unconditionally release the Existing Guarantors from each of their respective obligations, now or hereafter existing, under the SPA, including under Section 10.8 of the SPA.
- 3. <u>Termination of Confidentiality Agreements</u>. The Company and SK Holdings are parties to the confidentiality agreements dated November 15 and December 11, 2020 (the "Confidentiality Agreements"). The Confidentiality Agreements shall terminate upon execution and delivery of this Agreement, provided that (a) Sections 6, 7, 10, 13, 14, 15 and 16 of the December 11, 2020 confidentiality agreement shall remain in full force and effect until Closing, and (b) all provisions of the Confidentiality Agreements shall come into full force and effect again upon any termination of the SPA.

4.	Miscellaneous.
and A	(a) <u>Sections 11.1</u> (Governing Law; Submission to Jurisdiction), <u>11.2</u> (Waiver), <u>11.3</u> (Notices), <u>11.4</u> (Entire Agreement) Amendments), <u>11.6</u> (Headings; Nouns and Pronouns; Section References), <u>11.7</u> (Severability), <u>11.8</u> (Assignment), <u>11.9</u> (Successors ssigns), <u>11.10</u> (Counterparts) <u>11.12</u> (No Strict Construction), <u>10.14</u> (Equitable Relief; Remedies), <u>11.15</u> (Expenses) of the SPA shall mutatis mutandis to this Agreement as set forth herein.
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right 1 right 1	(b) None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including any or of any party hereto, except that, each of the Existing Guarantors shall be afforded third party beneficiary rights and have the to enforce Section 2 of this Agreement against the Company. Other than the Existing Guarantors, no third party shall obtain any under any provision of this Agreement or shall by reason of any such provision make any claim in respect of any debt, liability of ation (or otherwise) against any party hereto.
this A	(c) Notwithstanding anything to the contrary, to the extent there is any inconsistency or discrepancy between the SPA and greement, then this Agreement shall prevail.
	[Signature pages follow.]
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repres	sentatives as of the date first above written.  SK HOLDINGS CO., LTD.
	By:
	Name: Title:
	SK E&S CO., LTD.
	By: Name:
	Title:
	PLUG POWER INC.
	By: Name:
	Title:
	[Signature Page to Letter Agreement]

# PLUG POWER AND SOUTH KOREAN SK GROUP TO FORM A STRATEGIC PARTNERSHIP TO ACCELERATE HYDROGEN ECONOMY EXPANSION IN ASIAN MARKETS; PLUG POWER TO RECEIVE \$1.5 BILLION STRATEGIC INVESTMENT FROM SK GROUP

LATHAM, N.Y., January 6, 2021 -- Plug Power Inc. (NASDAQ: PLUG), a leading provider of hydrogen fuel cell and fueling solutions enabling e-mobility, and SK Group, one of the leading South Korean business groups, announced today that the companies intend to form a strategic partnership to accelerate hydrogen as an alternative energy source in Asian markets. Through this partnership, Plug Power and SK Group intend to provide hydrogen fuel cell systems, hydrogen fueling stations, and electrolyzers to the Korean and broader Asian markets. In conjunction with this partnership, the companies have also entered into a definitive agreement for SK Group to make a \$1.5 billion strategic investment in Plug Power and are announcing a plan to form a joint venture company in South Korea to support the rapidly growing Asian Market. The combination of SK Group's significant presence and leadership throughout Asia's energy industry and its strategic direction on portfolio transformation to green via hydrogen economy with Plug Power's leadership in hydrogen fuel cell systems, fueling stations and green hydrogen generation represents a powerful team to accelerate the growth of hydrogen economy in Asian markets.

In January 2019, the South Korea government announced the Hydrogen Economy Roadmap through 2040, with ambitious goals, including: over 5MM tons of hydrogen per year, over 6MM fuel cell EVs, 1,200 refilling stations and 15 GW of fuel cell power generation, and expects the cumulative economic value of its hydrogen economy to reach ~\$40Bn by 2040. Plug Power has proven its ability to scale a hydrogen business in North America as a global leader in the hydrogen economy. The opportunity to partner with SK presents an attractive and timely opportunity to establish a foothold in this market with one of South Korea's leading industrial conglomerates.

"SK Group has an established strategy for building out the hydrogen economy in South Korea and beyond," said Andy Marsh, CEO for Plug Power. "The current relationship with SK Group offers immediate strategic benefits to Plug Power to accelerate its expansion into Asian markets - and is intended to result in a formal joint venture (JV) by 2022. Due to the complementary strengths in this partnership, we expect rapid growth and significant revenue generation from the joint venture that are incremental to our 2024 plan."

"Plug Power is a leading player in the hydrogen industry with decades of experiences and distinguished business model," said Hyeongwook Choo, Head of Hydrogen Business Development Center of SK Holdings and president & CEO of SK E&S, a leading clean energy company engaged in renewable energy, LNG, and power plant businesses across the globe and a subsidiary of SK Holdings. "This partnership between Plug Power and SK will bring significant and solid opportunities in the hydrogen industry, creating value to society. SK Group is focusing and actively investing into the ESG sector and Plug Power would be one of our splendid footprints within this strategy."

This investment represents the largest U.S. clean energy PIPE in the last 20 years (based on the PrivateRaise PIPE database for transactions that have closed and includes common stock, preferred stock, convertible preferred stock and convertible debt). Additional details of the investment include:

## **Terms**

Under the terms of the investment, a US subsidiary of SK Group will make a \$1.5 billion investment in Plug Power by acquiring approximately 51.4 million shares of common stock at a price of \$29.2893 per share, the 30-day VWAP as of January 5<sup>th</sup>, 2021 at a zero percent discount. The investment is expected to represent an approximate 9.9% pro forma ownership stake in Plug Power.

## **Timing**

The investment transaction is subject to customary closing conditions and regulatory approvals, and is expected to close in the first quarter of 2021.

#### Advisors

Morgan Stanley & Co. LLC is serving as Financial Advisor and Goodwin Procter LLP is acting as legal advisor to Plug Power.

# **About Plug Power**

Plug Power is building the hydrogen economy as the leading provider of comprehensive hydrogen fuel cell turnkey solutions. The Company's innovative technology powers electric motors with hydrogen fuel cells amid an ongoing paradigm shift in the power, energy, and transportation industries to address climate change and energy security, while meeting sustainability goals. Plug Power created the first commercially viable market for hydrogen fuel cell technology. As a result, the Company has deployed over 40,000 fuel cell systems for e-mobility, more than anyone else in the world, and has become the largest buyer of liquid hydrogen, having built and operated a hydrogen highway across North America. Plug Power delivers a significant value proposition to end-customers, including meaningful environmental benefits, efficiency gains, fast fueling, and lower operational costs. Plug Power's vertically-integrated GenKey solution ties together all critical elements to power, fuel, and provide service to customers such as Amazon, BMW, The Southern Company, Carrefour, and Walmart. The Company is now leveraging its know-how, modular product architecture and foundational customers to rapidly expand into other key markets including zero-emission on-road vehicles, robotics, and data centers. Learn more at www.plugpower.com.

#### Safe Harbor Statement

This communication contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 that involve significant risks and uncertainties about Plug Power Inc.("PLUG"), including but not limited to statements about PLUG's expectations regarding the planned joint venture with SK, including when and if the joint venture will occur, the scope and terms of the joint venture and the potential growth and revenue related to the planned joint venture, the expansion into Asian markets, and the expected timing of the closing of the investment transaction. You are cautioned that such statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times that, or by which, such performance or results will have been achieved. Such statements are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in these statements. For a further description of the risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to the business of PLUG in general, see PLUG's public filings with the Securities and Exchange Commission, including the "Risk Factors" section of PLUG's Annual Report on Form 10-K for the year ended December 31, 2019 and Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020, June 30, 2020 and September 30, 2020. Readers are cautioned not to place undue reliance on these forward-looking statements. The forward-looking statements are made as of the date hereof, and PLUG undertakes no obligation to update such statements as a result of new information.

SOURCE: PLUG POWER

#### **Media Contact**

Ian Martorana The Bulleit Group (415) 237-3681 plugpowerpr@bulleitgroup.com Cover Jan. 06, 2021

**Cover** [Abstract]

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Document Period End DateJan. 06, 2021Entity File Number1-34392

Entity Registrant NamePlug Power Inc.Entity Central Index Key0001093691Entity Tax Identification Number22-3672377

Entity Incorporation, State or Country Code DE

Entity Address, Address Line One 968 Albany Shaker Road

Entity Address, City or Town

Entity Address, State or Province

NY

Entity Address, Postal Zip Code
City Area Code
Local Phone Number
Written Communications

Latham
NY

12110

782-7700

Written CommunicationsfalseSoliciting MaterialfalsePre-commencement Tender OfferfalsePre-commencement Issuer Tender Offerfalse

<u>Title of 12(b) Security</u> Common Stock, par value \$0.01 per share

Trading SymbolPLUGSecurity Exchange NameNASDAQ

Entity Emerging Growth Company false

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