

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹)	Case No. 23-11120 (BLS)
)	
Debtors.)	(Joint Administration Requested)
)	

DEBTORS' MOTION FOR ENTRY OF: (I) AN ORDER (A) APPROVING BIDDING PROCEDURES TO GOVERN THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (B) APPROVING PROCEDURES REGARDING ENTRY INTO ONE OR MORE STALKING HORSE AGREEMENTS, (C) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (D) APPROVING THE FORM AND MANNER OF THE NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) SCHEDULING AUCTIONS FOR THE SALES OF THE COMPANY ASSETS AND HEARINGS TO CONSIDER APPROVAL OF THE SALES AND APPROVING THE FORM AND MANNER OF THE NOTICE THEREOF, (F) APPROVING CERTAIN WIND-DOWN PROCEDURES, AND (G) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS' ENTRY INTO ONE OR MORE ASSET PURCHASE AGREEMENTS, (B) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" or the "Company") respectfully state as follows in support of this motion (this "Motion"): ²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to these chapter 11 cases and supporting this motion, is set forth in the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), the *Declaration of John Kimm in Support of the Debtors' Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors' Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors' Entry Into One or More Asset*



Relief Requested

1. The Debtors seek entry of an order (the “Bidding Procedures Order”) substantially in the form attached hereto as **Exhibit A**:

- (a) approving the bidding procedures (the “Bidding Procedures”) in substantially the form attached as **Exhibit 1** to the Bidding Procedures Order to govern any sale of all or substantially all of the Debtors’ assets (the “Company Assets”) or some combination thereof, pursuant to section 363 of the Bankruptcy Code;
- (b) approving the form and manner of notice of the Sale and the Bid Deadlines, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “Sale Notice”);
- (c) authorizing the Debtors, in their discretion, to: (i) select one or more bidders to act as stalking horse bidders (each, a “Stalking Horse Bidder” and each such bid, a “Stalking Horse Bid”) and enter into a purchase agreement or other executable document with each such Stalking Horse Bidder (each such agreement, a “Stalking Horse Agreement”); and (ii) provide certain bid protections in connection therewith, subject to Court approval;
- (d) approving procedures (the “Assumption and Assignment Procedures”) for the assumption and assignment of executory contracts and unexpired leases (the “Contracts”) as set forth in the Bidding Procedures Order;
- (e) approving the form and manner of the notice of assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “Cure Notice”) attached as **Exhibit 3** to the Bidding Procedures Order;
- (f) scheduling: (i) the Auction in connection with the Track A Bids (defined below), if any, to be held on October 19, 2023 at 10:00 a.m. (prevailing Eastern Time); and (ii) the Auction in connection with the Track B Bids to be held on November 9, 2023 at 10:00 a.m. (prevailing Eastern Time), subject to change in accordance with the Bidding Procedures;
- (g) scheduling: (i) a hearing to consider the approval of an Asset Sale (defined below) subject to the Track A Schedule (defined below) to a Successful Bidder (as defined in the Bidding Procedures) and the approval of the

Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief (the “Sale Declaration,” and, together with the First Day Declaration, the “Declarations”) filed contemporaneously herewith and incorporated herein by reference. Capitalized terms used but not defined have the meanings ascribed to them in the rest of this Motion or in the First Day Declaration.

corresponding Backup Bid (as defined in the Bidding Procedures), if any (the “Track A Sale Hearing”) on October 26, 2023; and (ii) a hearing to consider the approval of an Asset Sale subject to the Track B Schedule (defined below) to a Successful Bidder and the approval of the corresponding Backup Bid, if any (the “Track B Sale Hearing,” and together with the Track A Sale Hearing, the “Sale Hearings”) (both hearing dates and times subject to change in accordance with the Bidding Procedures, including depending on the Court’s availability);

(h) approving wind-down procedures for the potential wind-down (the “Wind-Down”) of certain of the Debtors’ business lines (or components thereof) (the “Wind-Down Procedures”), to be implemented in the Debtors’ sole discretion; and

(i) granting related relief.

2. If the Debtors determine to pursue consummation of a Sale in accordance with the Bidding Procedures, the Debtors further seek entry of one or more orders (each, a “Sale Order”) approving the Debtors’ entry into a definitive purchase agreement (each, a “Definitive Purchase Agreement”), substantially in the form that shall be attached to each Sale Order. The Debtors will file a proposed form of Sale Order at least twenty-one (21) days prior to any Sale Hearing. The Debtors anticipate that each Sale Order will provide for, among other things:

- (a) the sale of the applicable Company Assets on the terms set forth in the Definitive Purchase Agreement, including the sale of the Company Assets free and clear of liens, claims, interests, and other encumbrances;
- (b) the assumption and assignment of certain executory contracts and unexpired leases of the Debtors in connection therewith; and
- (c) related relief.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of

February 29, 2012 (the “Amended Standing Order”). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to a final order with respect to this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue of these chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are sections 105, 363, 365, 503, and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) and Local Rules 2002-1 and 6004-1.

Preliminary Statement

7. The Debtors seek to establish Bidding Procedures for the sale of all or any portion of the Company Assets pursuant to section 363 of the Bankruptcy Code (the “Asset Sale”). The Debtors believe that the Bidding Procedures will best facilitate potential Auctions for the Asset Sales, thereby maximizing recoveries for all stakeholders. The Bidding Procedures provide for substantial flexibility with respect to the structure of any transaction—*e.g.*, the Debtors may select one or more Stalking Horse Bidders and pursue Court-approved Bid Protections on the terms described in the Bidding Procedures if the Debtors believe, in the exercise of their business judgment, that doing so will maximize the value of the estates. In addition to one or more Asset Sales, the Debtors are likewise soliciting any other type of strategic transaction involving the Debtors and/or the Company Assets, including, without limitation, proposals for the raising of debt

or equity financing pursuant to a chapter 11 plan of reorganization (any of the immediately foregoing, a “Recapitalization Transaction”, and, any of the foregoing, including an Asset Sale, a “Potential Transaction”).

8. The Bidding Procedures also contemplate various deadlines by which Qualified Bids (as defined in the Bidding Procedures) must be submitted and the timing of any Auctions and ultimate sale of some or all the Company Assets. The timelines below have been vetted and approved by the Debtors’ management, boards, and advisors, and reflect a well-informed, strategic approach in an effort to maximize value for all constituents.

9. As described below and in the First Day Declaration, the Debtors have three distinct business lines: Proterra Transit; Proterra Powered; and Proterra Energy (each, a “Business Line”). In light of the nature and timing of the Proterra Transit production cycle, which manufactures electric transit buses, and Proterra Energy’s synergies with Proterra Transit, the Debtors propose a sales timeline that has the potential to bifurcate depending on the Bids the Debtors receive, into a “Track A” sales process for certain of the Company Assets, and a “Track B” sales process for other Company Assets. Specifically, the “Track A” schedule (the “Track A Schedule”) may include any Bid for a transaction including all or any portion of the assets of (i) Proterra Transit or (ii) Proterra Energy (such assets ((i) and (ii)), collectively, the “Track A Assets”), whereas the “Track B” schedule (the “Track B Schedule”) may include Bids for all Company Assets that are not sold in connection with the “Track A” process (except, in the Debtors’ business judgment, Proterra Valence) and are therefore not Track A Assets (the “Track B Assets”). The auction for the Track A Assets, if any, will be scheduled to take place 73 days after the Petition Date (the “Track A Auction”), and the auction for the Track B Assets will be scheduled to take place 94 days after the Petition Date (the “Track B Auction,” and together with the Track A

Auction, the “Auctions”). The Bidding Procedures provide the Debtors the authority to, in their business judgment, reschedule or cancel the date by which Qualified Bids must be received and/or any Auction is to be held. The proposed bifurcated sales process allows the Debtors to provide potential buyers of Company Assets the time necessary to put in their best and final offers, while also ensuring that the sales process for the Proterra Transit and Proterra Energy assets does not outlast the current production cycle.

10. Consistent with their goal to maximize value, the Debtors initially engaged Morgan Stanley & Co. LLC (“Morgan Stanley”) in February of 2023, as well as their investment banker, Moelis & Company LLC (“Moelis”), in April 2023, to commence marketing processes for various of the Debtors’ assets (the “Prepetition Marketing Process”). The Debtors and their current advisors have developed a robust list of potential counterparties whom they believe may be interested in, and whom the Debtors reasonably believe would have the financial resources to consummate a sale of the Company Assets or a subset thereof. To ensure the highest or otherwise best offer for the Company Assets or a subset thereof, the Debtors request the Court’s authority to execute the proposed marketing process in these chapter 11 cases in accordance with the proposed Bidding Procedures. As set forth in the Bidding Procedures, the Company also requests authority to (a) select one or more Stalking Horse Bidders and enter into Stalking Horse Agreements, and (b) in connection with any Stalking Horse Agreement with a Stalking Horse Bidder, provide Bid Protections, subject to further Court approval, to the extent that the Debtors determine that provision of such Bid Protections would be an actual and necessary cost of preserving the Debtors’ estates and enhance the Debtors’ sale process.

11. The Debtors also are seeking the authority, in their business judgment, to implement certain Wind-Down Procedures in connection with proposed the Sales process,

including removing certain business lines (or components thereof) from the Sale process and commencing a Wind-Down of those business lines (or components thereof) (each, a “Wound-Down Business”) in the event that the Debtors determine there is insufficient third party interest in such Wound-Down Business.

12. For the reasons explained in the Declarations, the Debtors believe that the marketing process and Bidding Procedures proposed herein provide appropriate time for the Debtors to market the Company Assets, receive and evaluate bids, execute one or more stalking horse agreements, as applicable, and hold an Auction or Auctions (if necessary) to determine the highest or otherwise best bid. The Debtors also believe that the proposed Wind-Down Procedures are in the best interests of the Debtors and their estates and should be approved.

13. Accordingly, the Debtors respectfully request that the Court grant the relief requested herein.

Background

A. General Overview

14. On August 7, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have contemporaneously filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

B. The Debtors’ Business Lines

15. The Debtors have three commercial units that each address a critical component of commercial vehicle electrification. First, the Debtors’ powered products unit,

Proterra Powered, produces proprietary battery systems and electrification solutions for global commercial vehicle original equipment manufacturer (“OEM”) customers. Second, the Debtors’ energy unit, Proterra Energy, produces and services turnkey fleet-scale, high-power charging solutions and software services. Proterra Energy also includes Proterra Valence, a connected vehicle intelligence system, which can provide customers performance information about their fleets. Third, Proterra Transit designs, develops, manufactures, and sells electric transit buses as an OEM for North American public transit agencies, airports, universities, and other commercial transit fleets.

16. As more fully described in the First Day Declaration, the Debtors have faced liquidity and cash flow constraints due to, among other reasons, liquidated damages provisions in certain of the Debtors’ transit contracts with their customers and vendors, and the capital needed to operate Proterra Transit.

17. Additional information regarding the Debtors’ business and the circumstances leading to the filing of the chapter 11 cases is set forth in the First Day Declaration.

C. The Prepetition Marketing Process

18. Beginning in February 2023, the Debtors engaged Morgan Stanley as a financial advisor to explore raising incremental financing. The Debtors also engaged Moelis in April 2023. Morgan Stanley and Moelis collectively communicated with 25 potential counterparties in the capital raise process, including 13 potential strategic investors and 12 potential financial investors. In addition, Moelis was engaged to find an acquirer for Proterra Transit. Moelis communicated with 26 potential investors and the Debtors executed 15 non-disclosure agreements, of which 11 were with potential strategic investors. None of the potential investors ultimately submitted a bid for a potential out-of-court purchase of Proterra Transit. While the focus of Morgan Stanley and Moelis’s engagement at this time was to explore

incremental financing and to divest Proterra Transit, certain potential investors also expressed interest in potentially purchasing Proterra Powered and Proterra Energy.

19. However, out of court, despite having potential investors being interested in Proterra Powered and Proterra Energy, the Debtors were unable to raise additional capital or address the structural impediments posed by Proterra Transit. The general feedback from potential investors was that the liabilities and burdensome contracts associated with Proterra Transit posed a barrier to commitment given that, as discussed above, substantially all of the assets and liabilities of the Debtors' three Business Lines are held in a single entity: Proterra Operating Company, Inc.

20. The Debtors' prepetition marketing processes for potential out-of-court transactions made two facts clear: On the one hand, there was significant interest in the Debtors' Business Lines—particularly Proterra Powered and Proterra Energy—and on the other hand, the commingling of Proterra Transit's liabilities within the same corporate entity as the other Business Lines frustrated the Debtors' ability to execute any value maximizing out-of-court sale or financing transaction. Despite the interest from potential strategic and financial bidders for the Proterra Powered Business Line, interest in the Business Lines was weakened by perceived liabilities from Proterra Transit.

21. Although the Prepetition Marketing Process did not produce an executable transaction, the Debtors and their advisors remain in discussions with certain of the potential counterparties engaged through the Prepetition Marketing Process and intend to continue to discuss a potential sale transaction with these and other parties throughout the proposed sale process.

D. The Proposed Auction and Sale Process

22. The Debtors filed the chapter 11 cases to pursue a value-maximizing sale and/or reorganization for the benefit of the Debtors' stakeholders. The Debtors, in consultation

with their advisors, determined that a continued marketing process under the supervision of the Court was likely to produce the highest or otherwise best offer for the Company Assets at the end of the marketing process, and would provide the most value to the Debtors and their stakeholders. Accordingly, the Motion seeks approval of the Bidding Procedures providing for a sale of the entire Company as a going concern, or of any other combination of Company Assets (any such sale, a “Sale”).

23. To ensure that the Debtors obtain the highest or otherwise best offer for their assets, the Debtors will continue marketing the Company Assets during the chapter 11 cases. To that end, the Debtors, in consultation with their advisors, propose potential auction(s) in the chapter 11 cases for the Company Assets in accordance with Court-approved Bidding Procedures. The Bidding Procedures provide for an open, comprehensive sale process that encourages Qualified Bidders (as defined in the Bidding Procedures) to submit Bids to acquire all or substantially all of the Company Assets (a “Whole Company Bid”) or separate bids to acquire any subset of the Company Assets (a “Partial Bid” and together with any Whole Company Bid(s) and/or any other Partial Bid(s), the “Bids”), to the extent that the consummation of such transactions maximizes value for stakeholders and can be accomplished efficiently. Once approved, the Bidding Procedures will also apply to any Recapitalization Transaction in accordance with a given bidder’s preference. Rather than focus solely on one potential path to monetization or reorganization, the Debtors believe that the best way to maximize value for their estates is to conduct a broad marketing process and solicit bids for any and all sale, financing, and plan transactions.

E. Bidding Procedures

24. The following summary describes the salient features of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1. All

interested bidders should read the Bidding Procedures attached to the Bidding Procedures Order in their entirety.

F. Credit Bids

25. At an Auction, if any, any Qualified Bidder that has a valid and perfected lien on any Company Assets (a “Secured Creditor”) to be sold at such Auction shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor’s undisputed claims (a “Credit Bid”), to the extent permitted under section 363(k) of the Bankruptcy Code, as it relates to the Company Assets; *provided, however*, that any Secured Creditor that intends to participate in an Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) business days prior to the applicable Bid Deadline that it intends to submit a Credit Bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor’s potential Credit Bid.

G. Stalking Horse Bidder and Bid Protections

26. By this Motion and in connection with the Bidding Procedures, the Debtors request authority, but not direction, to enter into one or more Stalking Horse Agreements to serve as the Stalking Horse Bidder for some or all of the Company Assets. A Stalking Horse Agreement may include, among other things, the documentation requirements set forth in section III.G.1 of the Bidding Procedures, including an agreement with respect to an Asset Sale or Recapitalization Transaction.

27. In the event the Debtors enter into any Stalking Horse Agreement that the Debtors determine is in the best interests of the Debtors and their estates, the Debtors will file with the Court and serve on the Sale Notice Parties (defined below) a notice (the “Stalking Horse Notice”) that includes: (a) the identification of the Stalking Horse Bidder(s); (b) a copy of the

Stalking Horse Agreement(s); (c) the deposit paid by the Stalking Horse Bidder(s); and (d) a summary of the proposed transaction in accordance with Local Rule 6004-1(b).

28. If the Debtors, in an exercise of their business judgment, determine that providing bid protections, including a break-up fee and expense reimbursement (the “Bid Protections”) to any Stalking Horse Bidder is appropriate, necessary, and value-additive to the process under the circumstances, the Debtors propose hereby to seek expedited consideration of such a motion, on no less than five (5) business days’ notice, for Court approval of such Bid Protections. Such motion, for the avoidance of doubt, may serve as the Stalking Horse Notice described herein.

29. Having the flexibility to designate one or more Stalking Horse Bidders and grant Bid Protections, subject to Court approval, will provide the Debtors with the ability to maximize the value of the Company Assets. Given the Debtors’ need to maximize value for creditors and other stakeholders through a timely and efficient marketing and sale process, the Debtors submit that the ability to designate one or more Stalking Horse Bidders and offer Bid Protections to such bidder(s), subject to Court approval (although the Debtors ultimately may, in the exercise of their business judgment, not designate a Stalking Horse Bidder) is a reasonable and sound exercise of the Debtors’ business judgment and provides an actual benefit to the Debtors’ estates.

H. Sale Notice

30. In accordance with Bankruptcy Rule 2002(a) and (c), the Debtors (or their agents) shall serve by first-class mail the Sale Notice, substantially in the form attached to the Bidding Procedures Order as Exhibit 2, upon: (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Company Assets or any Business Line; (b) all entities known to have asserted any lien, claim, or encumbrance in or upon any assets comprising the

Company Assets; (c) all federal, state, and local environmental, regulatory, or taxing authorities or recording offices which have a reasonably known interest in the relief requested by this Motion; (d) known counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to a Successful Bidder; (e) the Office of the United States Trustee for the District of Delaware; (f) all taxing authorities having jurisdiction over any of the Company Assets, including the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Offices of the United States Attorney for the District of Delaware; (i) counsel to the statutory committee of unsecured creditors, if any has been appointed, and (j) all persons and entities that have filed a request for service of filings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the “Sale Notice Parties”).

I. Assumption and Assignment of the Executory Contracts and Unexpired Leases and Cure Notice

31. The Debtors are seeking approval of the Assumption and Assignment Procedures set forth in the Bidding Procedures Order to facilitate the fair and orderly assumption and assignment of executory contracts and unexpired leases. The Assumption and Assignment Procedures will notify the Non-Debtor Counterparties (defined below) of the potential assumption and assignment of their contracts and/or leases and the Debtors’ calculation of any cure amount.

32. The Debtors are also seeking approval of the Cure Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**, which they propose to serve on each non-Debtor counterparty (each, a “Non-Debtor Counterparty”) to an executory contract or unexpired lease related to any of the Company Assets which may be assumed or assumed and assigned, no later than twenty-one (21) days before the Track A Sale Hearing. The Cure Notice will:

- (a) identify each Contract;

- (b) state the cure amounts, if any, that the Debtors believe are necessary to assume such contracts or leases pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”);
- (c) include a statement that the assumption and assignment of such Contract is neither required nor guaranteed;
- (d) notify the Non-Debtor Counterparty that its contract(s) and/or lease(s) may be assumed and assigned to a Stalking Horse Bidder, if any or to such other Successful Bidder at the conclusion of the applicable Auction, if any;
- (e) inform the Non-Debtor Counterparty that objections (a “Cure/Assignment Objection”), if any, to one or more of (i) the proposed Cure Amount, (ii) the ability of a Stalking Horse Bidder, if any, to provide adequate assurance of future performance, and (iii) the proposed assumption, assignment, and/or transfer of its contract(s) or lease(s) (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of any Successful Bidder (other than the Stalking Horse Bidder, if any), must: (x) be in writing; (y) state with specificity the nature of such objection, including the amount of Cure Amount in dispute; and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than **4:00 p.m. (prevailing Eastern Time) on October 12, 2023** (the “Cure/Assignment Objection Deadline”); *provided*, that if the Successful Bidder is a party other than the Stalking Horse Bidder, if any, objections of Non-Debtor Counterparties related to the identity of such other Successful Bidder must: (x) be in writing; (y) state with specificity the nature of such objection; and (z) be filed with the Court and properly served on the Notice Parties so as to be actually received no later than 10:00 a.m. (prevailing Eastern Time) on the date that is three (3) business days prior to the date initially scheduled for the commencement of the applicable Sale Hearing (each, a “Post-Auction Objection Deadline”); and
- (f) state the date of the applicable Sale Hearing(s), and note the possibility of adjournment.

33. The Debtors propose that any Cure/Assignment Objection must be in writing, filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801, and served on the Notice Parties so as to be received by the Cure/Assignment Objection Deadline.

34. If no objection to the proposed Cure Amounts is timely received, the Cure Amounts set forth in the Cure Notice shall be controlling and binding upon the applicable Non-

Debtor Counterparty, notwithstanding anything to the contrary in any assigned contracts or leases or other documents as of the date of the Cure Notice.

35. To the extent that any Non-Debtor Counterparty does not timely file and serve a Cure/Assignment Objection, such Non-Debtor Counterparty will be: (i) deemed to have consented to the Cure Amounts, if any, set forth in the Cure Notice; (ii) barred, estopped, and enjoined from asserting any additional Cure Amounts under the assumed and assigned executory contracts or unexpired leases; (iii) barred from objecting to the assumption and assignment of such contracts or leases to the applicable Successful Bidder; and (iv) barred from objecting to adequate assurance of future performance by such Successful Bidder.

36. If the Debtors receive any Cure/Assignment Objection that relates solely to the proposed Cure Amount set forth in the Cure Notice, the Debtors propose that they may, with the consent of, or at the direction of, a Stalking Horse Bidder, if any (or other Successful Bidder), pay the undisputed portion of such Cure Amount and place the disputed amount in a segregated account pending further order of the Court or mutual agreement of the parties. In that instance, the objecting Non-Debtor Counterparty will have recourse only to the funds held in such segregated account. So long as the disputed amount is held in such segregated account, the Debtors may, without delay, assume and assign the executory contract or unexpired lease that is the subject of such Cure/Assignment Objection.

J. Request to Set a Date for the Sale Hearing and Sale Objection Deadline

37. The Debtors intend to present the Successful Bid(s) (as defined in the Bidding Procedures) for approval by the Court at the Sale Hearings currently proposed for (a) October 26, 2023, for the Track A Sale Hearing, and (b) November 16, 2023, for the Track B Sale Hearing, pending the Court's availability and subject to change in accordance with the

Bidding Procedures. The Debtors shall be deemed to have accepted a Bid only when the Bid has been approved by the Court at the applicable Sale Hearing.

38. Subject to entry of the Bidding Procedures Order, all objections to any Sale (a “Sale Objection”) must be in writing and filed on and served so as to be received by **4:00 p.m. (prevailing Eastern Time) on October 2, 2023**, the “Sale Objection Deadline”), and filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801. In addition, any Sale Objection must be served on the Notice Parties so as to be received on the Sale Objection Deadline.

K. Table of Relevant Dates

39. The following table summarizes the proposed dates requested in connection with the Sales for the Track A Assets and the Track B Assets (all times referenced below refer to prevailing Eastern Time).³ If any bidder desires to submit a Whole Company Bid, or other Bid that includes, but is not limited to, the Track A Assets (a “Track A Bid” and, any Bid that is not a Track A Bid, a “Track B Bid”), such bidder should adhere to the proposed deadlines and deadlines set forth below with respect to the Auction of the Track A Assets to guarantee that the Debtors will consider such Bid.

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ⁴	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Petition Date	P = 0 (Monday, August 7, 2023)	
Bidding Procedures Objection Deadline	7 days prior to the Bidding Procedures Hearing	
Bidding Procedures Hearing	Second Day Hearing (P + ~28)	

³ The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures and Bidding Procedures Order, as applicable.

⁴ Unless otherwise indicated, all deadlines (but not events) are 4:00 p.m. (prevailing Eastern Time).

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ⁴	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Service and Publication of Sale Notice	1 business day after entry of Bidding Procedures Order or as soon as reasonably practicable thereafter	
Initial Indication of Interest (“IOI”) Deadline	P + 42 (Monday, September 18, 2023)	
Debtors’ Deadline to File a Proposed Form of Sale Order	P + 42 (Monday, September 18, 2023)	
Debtors’ Deadline to File and Serve Cure Notices	P + 45 (Thursday, September 21, 2023)	
Sale Objection Deadline	P + 56 (Monday, October 2, 2023)	
Cure/Assignment Objection Deadline	P + 66 (Thursday, October 12, 2023)	
Qualified Bid Submission Deadline (can be moved at Debtors’ discretion)	P + 70 (Monday, October 16, 2023)	P + 91 (Monday, November 6, 2023)
Determination of Qualified Bids	P + 72 (Wednesday, October 18, 2023)	P + 93 (Wednesday, November 8, 2023)
Auction (if necessary)	P + 73 (Thursday, October 19, 2023 @ 10:00 a.m. (ET))	P + 94 (Thursday, November 9, 2023 @ 10:00 a.m. (ET))
Identification of Successful Bidder and Backup Bidder, if any	P + 74 (or as soon as reasonably practicable thereafter) (Friday, October 20, 2023)	P + 95 (or as soon as reasonably practicable thereafter) (Friday, November 10, 2023)
Post-Auction Objection Deadline	P + 77 (Monday, October 23, 2023)	P + 98 (Monday, November 13, 2023)

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ⁴	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Deadline to File Replies in Connection with Sale	P + 78 @ 10:00 a.m. (Tuesday, October 24, 2023)	P + 99 @ 10:00 a.m. (Tuesday, November 14, 2023)
Sale Hearing	P + 80 (Thursday, October 26, 2023)	P + 101 (Thursday, November 16, 2023)
Closing Date	As soon as reasonably practicable following entry of a Sale Order	As soon as reasonably practicable following entry of a Sale Order

40. The Debtors may elect to move Track A Bids from the schedule entitled “Track A Bids” above (the “Track A Schedule”) to the schedule entitled “Track B Bids” above (the “Track B Schedule”) to the extent the Debtors determine, in their reasonable business judgment, that doing so will best promote the goals of the bidding process, and any Bid that the Debtors move to the Track B Schedule shall be deemed to be a Track B Bid rather than a Track A Bid for purposes of the Bidding Procedures.

L. The Proposed Wind-Down Procedures

41. In connection with the Sales process described herein, the Debtors request that the Court approve the following Wind-Down Procedures, which the Debtors may use in connection with any of their Business Lines (or components thereof) in their sole discretion, if the Debtors determine that winding down such Business Lines (or components thereof) is in the best interests of the Debtors’ estates, their creditors, and all stakeholders due to insufficient third party interest in such Business Lines (or components thereof):

- (a) For any proposed Wound-Down Business, the Debtors will file a notice (the “Wind-Down Notice”) with the Court indicating their intent to

commence the Wind-Down Procedures with respect to such business, which notice shall be served on the Notice Parties and shall include the following:

- i. A description of the Company Assets and or Business Lines (or components thereof) constituting the Wound-Down Business that will be subject to the Wind-Down Procedures and discontinued, sold, or otherwise liquidated;
 - ii. The date on which the Debtors anticipate commencing the Wind-Down of the Wound-Down Business, which shall be no earlier than the Wind-Down Order Hearing (defined below), if any;
 - iii. A description of any reductions in force anticipated in connection with the Wind-Down;
 - iv. A list of executory contracts and/or unexpired leases proposed to be rejected in connection with the Wind-Down (subject to the Debtors' authority, in their sole discretion, to modify such list) (which rejection shall be by separate motion and subject to Court approval);
 - v. The additional professionals, if any, the Debtors propose to retain (which retention shall be by separate motion or application and subject to Court approval) to facilitate the Wind-Down;
 - vi. The approximate date by which the Debtors anticipate completing the Wind-Down;
 - vii. A proposed order granting the Debtors' request to commence the Wind-Down Procedures with respect to the Wound-Down Business (the "Wind-Down Order");
 - viii. The time, date, and location of the Wind-Down Order Hearing; and
 - ix. Any other information, provided in the Debtors' sole discretion, to explain, among other things, the proposed Wind-Down, the reasons for the Wind-Down, and the alternatives to the Wind-Down.
- (b) On the date that is five (5) business days' following the filing of the Wind-Down Notice, subject to the Court's availability, the Court shall hold a hearing to consider entry of the Wind-Down Order (the "Wind-Down Order Hearing"), unless such hearing is cancelled in accordance with paragraph (c), below.
- (c) At 4:00 p.m. (prevailing Eastern Time) on the date that is two (2) business days prior to the Wind-Down Order Hearing, any party that objects to the relief requested in the Wind-Down Order shall file an objection with the

Court. If no objections are timely filed to entry of the Wind-Down Order, the Court may, in its sole discretion, cancel the Wind-Down Order Hearing and immediately enter the Wind-Down Order without a hearing (and before the Wind-Down Order Hearing was scheduled to occur).

Bases for Relief

A. The Bidding Procedures Are Fair and Reasonable

42. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. As described above, the Bidding Procedures ensure a fair, comprehensive process that allows for the consideration of Bids to the extent that transactions contemplated by such Bids maximize value and can be executed efficiently and reliably.

43. The Debtors believe that the Bidding Procedures are appropriate under sections 105 and 363 of the Bankruptcy Code to ensure that the bidding and sale process is conducted fairly and will yield the highest or otherwise best value for their estates and stakeholders. The Bidding Procedures are designed to facilitate a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids for the Company Assets, including Partial Bids and Bids for Recapitalization Transactions, as provided in the Bidding Procedures. The Bidding Procedures also provide potential bidders with sufficient notice and opportunity to submit the necessary materials to gain access to diligence materials necessary to submit a timely and informed Bid. Thus, the Debtors and all parties in interest can be assured that the consideration for the Company Assets or subset thereof, including the consideration to be provided by each Stalking Horse Bidder, if any, in exchange for the Company Assets or any subset thereof, if no other party submits a Qualified Bid, will be fair and reasonable. At the same time, the Bidding Procedures afford the Debtors the opportunity to consider all

competing offers and to select, in their reasonable business judgment, the highest or otherwise best offers for the Company Assets or any subset thereof.

44. The Debtors believe that the Bidding Procedures provide an appropriate framework for the sale of the Company Assets or any subset thereof that will enable the Debtors to review, analyze, and compare all offers received to determine which offer is the highest or otherwise best offer and in the best interests of the Debtors' estates, creditors, and stakeholders. The Debtors believe that the proposed deadlines and milestones for noticing, marketing, and selling the Company Assets or any subset thereof offer potential bidders ample opportunity to prepare and submit Qualified Bids. Accordingly, the Debtors believe that the Court should approve the Bidding Procedures.

B. Approval of the Sale is Warranted Under Section 363(b) of the Bankruptcy Code

45. The Debtors submit that compelling business justifications exist for the proposed Sales, and, therefore, the Sales should be approved as a sound exercise of the Debtors' business judgment. Section 363 of the Bankruptcy Code provides that "[t]he [debtor-in-possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . ." 11 U.S.C. § 363(b)(1). The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Adams Res. Expl. Corp.*, No. 17-10866 (KG), at 12 (Bankr. D. Del. 2017) ("The relief requested in the Sale Motion . . . is a necessary and appropriate step toward enabling the Debtor to maximize the value of its bankruptcy estate, and it is in the best interests of the Debtor, its estate, and its creditors."); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate."); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) ("The purpose of procedural

bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”).

46. Following the decision in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), courts have used the “sound business purpose” standard for approving sales pursuant to section 363. *See, e.g., In re ICL Holding Co. Inc.*, 802 F.3d 547, 551 (3d Cir. 2015); *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (approving a sale pursuant to section 363 where there was a “legitimate business justification”); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). When evaluating whether a sale of property under section 363 is supported by a sound business purpose, courts consider a variety of factors that essentially represent a “business judgment” test. *In re Culp*, 550 B.R. 683, 697 (Bankr. D. Del. 2015). The “sound business purpose” test requires a debtor to establish that: “(1) a sound business purpose exists for the sale; (2) the sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the purchaser has acted in good faith.” *In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)); *see also In re: Pursuit Cap. Mgmt., LLC*, No. BR 14-10610-LSS, 2016 WL 5402735, at *4 (D. Del. Sept. 26, 2016).

47. As discussed above, the Debtors have been exploring transactions to restructure their indebtedness and/or sell assets since February 2023 through the Prepetition Marketing Process. Based on the market feedback in response to the Prepetition Marketing Process, the Debtors have reasonably concluded that (i) efficient sale(s) of substantially all of their assets to one or more Stalking Horse Bidders, if any, or any other Successful Bidder, and/or (ii) a Recapitalization Transaction, the terms of which are solicited along the same timelines as the Asset

Sales, represents the best opportunity for the Debtors to maximize value and preserve their going concern value for the benefit of their stakeholders.

48. Engaging in the proposed postpetition marketing process under the supervision of the Court—with the potential benefit of one or more Stalking Horse Bidders, should the Debtors choose to designate any as their “baseline” bid—will ensure that the Debtors’ marketing process is open and comprehensive, yet expeditious, thereby establishing that any Asset Sale and/or Recapitalization Transaction represents a fair transaction that maximizes the value of the Debtors and limits the time and cost spent during the course of these chapter 11 cases.

49. Additional “market exposure” and an auction process—the best means for establishing whether a fair and reasonable price is being paid—will provide additional value to the Debtors’ estates, through the potential solicitation of higher or better offers than the indications of interest received as the result of the Prepetition Marketing Process. Consequently, the proposed Asset Sales and/or Recapitalization Transactions in accordance with the Bidding Procedures satisfy the “sound business purpose” test for the sale of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code.

50. In addition to the fair and reasonable value offered by the Stalking Horse Bidders, if any, or other Successful Bidder(s) for the purchased assets, the Definitive Purchase Agreements, a version of which shall be filed prior to the applicable Sale Hearings, will be the product of vigorous arms’-length, good-faith negotiations among the relevant parties.

51. Lastly, the Company’s financial advisors have already exposed the Company Assets to the market through the Prepetition Marketing Process, described above. The Debtors are also proposing extensive notice of the Sale in the chapter 11 cases, including direct notice to potentially interested purchasers and the Debtors’ creditors and publication notice in a

nationally-circulated newspaper, to ensure that all interested parties are aware of the opportunity to further submit Bids for the Company Assets.

52. Accordingly, the Debtors submit that the proposed Asset Sales and/or Recapitalization Transactions as contemplated herein and pursuant to the process set forth in the Bidding Procedures are in the best interests of the Debtors, their estates, and their creditors, and should be approved.

C. The Company Assets Should be Sold Free and Clear of Claims, Liens, and Encumbrances Under Section 363(f) and Successor Liability Claims

53. The Debtors also submit that any Asset Sales should be free and clear of any and all claims, liens, and encumbrances under section 363(f) of the Bankruptcy Code (other than “Assumed Liabilities” and “Permitted Encumbrances” as provided in the Definitive Purchase Agreement(s). Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of third-party interests only if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interests; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) of the Bankruptcy Code is written in the disjunctive, any of the five conditions provides authority to sell free and clear of claims, liens, and encumbrances. *See In re Pacific Energy Res Ltd., et al.*, Case No. 09-10785 (KJC) (Bankr. D. Del. Aug. 18, 2009); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“[I]f any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *In re Flying J Inc., et al.*, Case No. 08-13384 (MFW) (Bankr. D. Del. July 27, 2009).

54. The Debtors submit that each lien that is not an assumed liability or permitted encumbrance under each Definitive Purchase Agreement, as applicable, satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code. If an entity with liens on the certain of the Company Assets does not consent to the proposed Sale of such assets, the Debtors intend to demonstrate at the applicable Sale Hearing their satisfaction of the requirements of section 363(f) of the Bankruptcy Code, including because the Debtors may sell the assets comprising the Company Assets free and clear of any other interests under section 363(f)(5) of the Bankruptcy Code because the liens on any assets sold will attach to the cash proceeds of the Sale in their order of priority and entities holding such interests could be compelled to accept money satisfaction in legal or equitable proceedings. *See In re Boston Generating, LLC*, 440 B.R. 302, 332 (Bankr. S.D.N.Y. 2010); *In re Beker Indus., Corp.*, 63 B.R. 474, 477–78 (Bankr. S.D.N.Y. 1986). Accordingly, pursuant to section 363(f) of the Bankruptcy Code, the Debtors may sell the Company Assets free and clear of all claims, liens, and encumbrances.

55. Moreover, the Debtors will send the Sale Notice to any purported lienholders. If such lienholders do not object to the proposed Sale, then their consent should reasonably be presumed. Accordingly, the Debtors request that unless a party asserting a lien on any of the Company Assets (other than with respect to assumed liabilities or permitted encumbrances under each Definitive Purchase Agreement, as applicable) timely objects to this Motion, such party shall be deemed to have consented to any Sale approved at the applicable Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same); *see also, Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 548 (7th Cir. 2003) (finding that a lessee who did not object to the sale order or seek

adequate protection had no additional recourse when leasehold interest was sold through a section 363 sale).

56. It is also appropriate to sell the Company Assets free and clear of successor liability relating to the Debtors' business. Such limitations on successor liability ensure that the Successful Bidder is protected from any claims or lawsuits premised on the theory that the Successful Bidder is a successor in interest to one or more of the Debtors. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free and clear from successor liability relating to the debtor's business. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288–90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) (affirming the sale of debtors' assets free and clear of certain taxes); *In re Ormet*, 2014 WL 3542133, at *4 (Bankr. D. Del. July 17, 2014) (permitting a sale free and clear of successor liability claims relating to an under-funded pension plan); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory).

57. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens, and encumbrances would be defeated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct. Moreover, without such assurances, potential bidders may choose not to participate in the Auctions or, if they did, would submit reduced bid amounts. To that end, the Debtors submit that the Successful Bidder(s) consummating an Asset Sale should not be liable under any theory

of successor liability relating to the Debtors' business, but should take the acquired Company Assets free and clear.

D. The Successful Bidder(s) Should be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

58. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147; *see also, In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Temtechco, Inc.*, 1998 WL 887256, at *5 (D. Del. 1998); *In re Congoleum Corp.*, 2007 WL 1428477, at *2 (Bankr. D.N.J. May 11, 2007). Any Sale transaction will be result of a robust, intensive postpetition sale process, and any resulting Definitive Purchase Agreement will be the result of extensive, arm's-length negotiations, with both parties separately represented by independent advisors, which the Debtors and any applicable purchaser will further demonstrate through additional evidence submitted in connection with the proposed Asset Sales.

59. These chapter 11 cases and the proposed Bidding Procedures are aimed at marketing the Company Assets in an exhaustive yet efficient fashion. The Debtors diligently formulated the Bidding Procedures to ensure an open and fair process. The Bidding Procedures expand upon the sale process that the Debtors and their advisors launched prepetition, and they permit Bids for all or some of the Company Assets, including as Bids for Recapitalization Transactions. Pursuant to the Bidding Procedures, the Debtors will consider all Qualified Bids to ensure an arms'-length, good-faith sale process.

60. Accordingly, the Debtors request that each Sale Order includes a provision that the Successful Bidder for any Company Assets acquired pursuant to such Sale Order is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors

maintain that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for such Company Assets.

E. The Stalking Horse Bidder Provisions Are Fair and Reasonable and Should Be Approved

61. The Debtors are also seeking authority to designate one or more Stalking Horse Bidders and, in connection therewith, seek authority, on no less than five (5) business days' notice, to offer Bid Protections to each such Stalking Horse Bidder. Debtors customarily utilize stalking horse bidders, a bidder who is "an initial bidder whose due diligence and research serve to encourage future bidders, and whose bid sets a floor for subsequent bidding," to maximize the value of estate assets at auction. *See In re Interforum Holding LLC*, 2011 WL 2671254, at *1 n.1 (E.D. Wis. July 7, 2011) (stalking horse bidders "establish a framework for competitive bidding and facilitat[ing] a realization of that value"). The offering of Bid Protections to induce stalking horse bidders to provide these benefits has become an established practice in chapter 11 cases.

62. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling estate assets. *See, e.g., In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) ("In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [Debtor] to show that a sound business purpose justifies such actions.' If the [Debtor's] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale." (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'" (internal citations omitted)); *see also Integrated Resources*, 147 B.R. at 656–57 (noting that bidding procedures that have been negotiated by a trustee are to be reviewed according to the deferential "business judgment" standard, under which such

procedures and arrangements are “presumptively valid”). With respect to the granting of bid protections, the Third Circuit has held that there is no “compelling justification for treating an application for a break-up fee and expenses under § 503(b) differently from other applications for administrative expenses under the same provision.” *Reliant Energy Channelview LP v. Kelson Channelview LLC* (*In re Reliant Energy Channelview LP*), 594 F.3d 200, 206 (3d Cir. 2010) (citing *Calpine Corp. v. O’Brien Env’t Energy, Inc. (In re O’Brien Env’t Energy, Inc.)*, 181 F.3d 527 (3d Cir.1999)).

63. Therefore, the Third Circuit has ruled that bid protections must meet the standard set forth in the administrative expense provisions of Bankruptcy Code section 503(b), which is generally satisfied if such bid protections provide some benefit to the debtor’s estate. *See In re Energy Future Holdings Corp.*, 904 F.3d 298, 314 (3rd Cir. 2018); *In re O’Brien Envtl. Energy, Inc.*, 181 F.3d at 533. Benefits to the debtor’s estate may be found if “assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited” and where the availability of the break-up fees and expenses “were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely . . . increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.* at 537. The Bid Protections contemplated herein may be necessary to induce parties to act as Stalking Horse Bidders.

64. Notably, one or more Stalking Horse Bids would ensure the continuation of the Company’s Business Lines (or components thereof) subject to such Stalking Horse Bid as a going concern and establish a substantial “baseline” for a thorough, post-petition auction. Such Stalking Horse Bids may further contemplate the employment of some or all of the Debtors’

employees, provide for the satisfaction of some or substantially all accrued trade obligations as they become payable post-Sale in the ordinary course of business, or contemplate the assumption of some or substantially all of the Debtors' executory contracts and unexpired leases. In consideration of the foregoing, the Debtors submit that the Court should authorize the Debtors to offer Bid Protections pursuant to section 503(b), 507(a)(2), and 507(b), which protections will be subject to further Court order.

F. Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

65. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). Courts use the business judgment standard to determine whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (stating that the assumption or rejection of a lease "will be a matter of business judgment by the bankruptcy court"); *In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor's decision to assume or reject an executory contract is governed by the "business judgment" standard). The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) *quoting In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). A more exacting scrutiny would harm the estate through increased costs and further, "would slow the administration of a debtor's estate, . . . interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311

(5th Cir. 1985). Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under title 11. Pursuant to section 105(a) of the Bankruptcy Code, a court may issue orders or decrees that help preserve or protect the value of a debtor's assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”).

66. The assumption and assignment of executory contracts and unexpired leases, as designated by a Stalking Horse Bidder or other Successful Bidder, is crucial to the Debtors' ability to obtain the best value in connection with the Sale and falls well within the reasonable exercise of the Debtors' business judgment. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). Once an executory contract is assumed, the trustee or debtor in possession may elect to assign it. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor's estate”). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract ... only if the trustee assumes such contract ... and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989). Among other things, adequate

assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.

67. The Debtors respectfully submit that the Assumption and Assignment Procedures are appropriate and reasonably tailored to provide Non-Debtor Counterparties with adequate notice of the potential assumption and assignment of their contracts and leases, as well as proposed Cure Amounts, if any. Non-Debtor Counterparties will have the opportunity to object to the Cure Amounts listed in the Cure Notice, or to the assumption and assignment of their contracts and leases on other grounds, including concerns regarding inadequate assurance of future performance. The Assumption and Assignment Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Accordingly, the Debtors submit that implementation of the Assumption and Assignment Procedures is appropriate under the facts and circumstances of the chapter 11 cases and the proposed Sales.

68. For the foregoing reasons, the Debtors submit that the assumption and assignment of the Debtors' contracts and leases to a Stalking Horse Bidder or other Successful Bidder should be approved as an exercise of the Debtors' sound business judgment.

G. The Form, Manner, and Extent of Notice of the Motion and the Proposed Sale are Appropriate and Adequate Under the Circumstances

69. The Debtors will serve the Sale Notice and the Cure Notice and propose to publish a form of the Sale Notice in the *Wall Street Journal*, *New York Times*, *USA Today* or other national publication in accordance with the Bidding Procedures Order. The notice of the proposed Sale to be provided by the Debtors as set forth herein sufficiently describes the terms and conditions of the proposed Sale.

70. Several sections of the Bankruptcy Code and Bankruptcy Rules dictate the sufficiency of notice and adequacy of service. As discussed below, the content and manner of service of this Motion and the related notices satisfy all such requirements:

- (a) Section 363 Notice – section 363 of the Bankruptcy Code provides that a trustee may sell property “after notice and hearing.” Under Section 102(1) of the Bankruptcy Code, the phrase “after notice and hearing” means “notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). As set forth above, creditors will be provided notice of the salient details regarding this motion and the applicable Sale Hearing through service of this motion, the Sale Notice, and the Cure Notice, each as described herein. Accordingly, notice is sufficient under section 363 of the Bankruptcy Code.
- (b) Bankruptcy Rule 2002 – Bankruptcy Rule 2002 requires twenty-one (21) days’ notice of the proposed sale of property other than in the ordinary course of business. In addition, Bankruptcy Rule 2002 provides that notice of a sale shall “include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.” Fed. R. Bankr. P. 2002. As set forth above, the notice of this Motion that has been and will be provided by the Debtors satisfies each of these requirements.
- (c) Bankruptcy Rules 6004 and 6006 – Bankruptcy Rule 6004 requires that notice of sales of property out of the ordinary course of business complies with Bankruptcy Rule 2002. As set forth above, the Debtors have complied with Bankruptcy Rule 2002. Bankruptcy Rule 6006 requires notice of a motion to assume and assign an executory contract or unexpired lease to be served on the non-Debtor counterparty to such contract or lease, as well as on other parties in interest as the Court may direct. The Sale Notice and the Cure Notices have been or will be served on the Non-Debtor Counterparties to any assigned contracts, thereby satisfying this requirement.
- (d) Procedural Due Process – The notices of this Motion and the applicable Sales that are being provided as described herein, including the notice being provided by publication as described herein and the Bidding Procedures Order, are “reasonably calculated” to apprise interested parties of the pendency of the matter and to afford them an opportunity to object. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Parties in interest have been and should be found to have been afforded adequate notice of this Motion, the proposed Sale, the Bidding Procedures, and the other relief requested herein.

71. The Debtors submit that the notice they intend to provide as outlined above with respect to the proposed Sale, the Bidding Procedures, the Bid Protections, and the Cure Amounts, as applicable, is reasonable and appropriate and constitutes good and adequate notice of the Sale of the Company Assets and the procedures and proceedings related thereto and therefore should be approved by this Court.

H. The Wind-Down Procedures Should be Approved

72. To obtain Court approval to use property under section 363(b) of the Bankruptcy Code for the purpose of liquidating or winding down a business, the Debtors need only show a legitimate business justification for the proposed action. *See, e.g., Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”) (citation omitted). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption ““that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.”” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

73. The Debtors submit that obtaining authority to implement the Wind-Down Procedures represents a sound exercise of the Debtors’ business judgment. Here, approval of the Wind-Down Procedures will provide the Debtors with an expedited path to pivot to a Wind-Down of any of its Business Lines (or components thereof), thus allowing the Debtors to preserve resources in the event it is determined a Wind-Down is the value maximizing path for the Debtors

in connection with any such Wound-Down Business. Therefore, the Debtors submit that the Wind-Down Procedures should be approved.

I. The Stay of any Sale Orders Should be Waived

74. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), an order authorizing the sale of property or the assignment of an unexpired lease is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise.

75. The Debtors request that the Court order that such stay is not applicable with respect to any Sale Orders entered with respect to any sale of the Company Assets and assignment and assumption of the related executory contracts and/or unexpired leases.

Notice

76. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Cowen Parties; (d) counsel to Bank of America; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) the state attorneys general for states in which the Debtors conduct business; (h) the Banks; and (i) the Securities and Exchange Commission; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of Page Intentionally Left Blank]

Conclusion

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: August 8, 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Andrew L. Magaziner

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- and -

**PAUL, WEISS, RIFKIND,
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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
PROTERRA INC, <i>et al.</i> , ¹)	
)	Case No. 23-11120 (BLS)
Debtors.)	
)	(Jointly Administered)
)	
)	Re: Docket No. ____

**ORDER (A) APPROVING
BIDDING PROCEDURES TO GOVERN
THE SALE OF ALL OR SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS PURSUANT
TO SECTION 363 OF THE BANKRUPTCY CODE,
(B) APPROVING PROCEDURES REGARDING ENTRY
INTO ONE OR MORE STALKING HORSE AGREEMENTS,
(C) ESTABLISHING PROCEDURES FOR THE ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES, (D) APPROVING THE FORM AND MANNER OF THE NOTICE OF
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UN-
EXPIRED LEASES, (E) SCHEDULING AUCTIONS FOR THE SALES OF THE
COMPANY ASSETS AND HEARINGS TO CONSIDER APPROVAL OF THE SALES
AND APPROVING THE FORM AND MANNER OF THE NOTICE THEREOF,
(F) APPROVING CERTAIN WIND-DOWN PROCEDURES, AND (G) GRANTING
RELATED RELIEF**

Upon of the motion (the "Motion") of the Debtors² for entry of an order (a) approving the bidding procedures (the "Bidding Procedures") in substantially the form attached as **Exhibit 1** hereto to govern any sale of all or substantially all of the Debtors' assets (the "Company Assets") or some combination thereof, pursuant to section 363 of the Bankruptcy Code, (b) approving the form and manner of notice of the Sale and the Bid Deadlines, substantially in the form attached as **Exhibit 2** hereto (the "Sale Notice"), (c) authorizing the Debtors, in their discretion, to (i) select

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (1379); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

² Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion or the Bidding Procedures.

one or more bidders to act as stalking horse bidders (each, a “Stalking Horse Bidder” and each such bid, a “Stalking Horse Bid”) and enter into a purchase agreement or other executable document with any such Stalking Horse Bidder (each such agreement, a “Stalking Horse Agreement”), and (ii) provide certain bid protections in connection therewith, subject to further order of this Court; (d) approving procedures (the “Assumption and Assignment Procedures”) for the assumption and assignment of executory contracts and unexpired leases as set forth in the Bidding Procedures Order; (e) approving the form and manner of the notice of assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “Cure Notice”) attached as **Exhibit 3** hereto; (f) scheduling one or more auctions for the sale of the Company Assets and a hearing or hearings to consider approval of the sale or sales of the Company Assets and approving the form and manner of the notice thereof; (g) approving wind-down procedures for the potential wind-down of certain of the Debtors’ Business Lines (or components thereof) (the “Wind-Down Procedures”), to be implemented in the Debtors’ sole discretion; and (h) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration and the Sale Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and

no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”), as applicable; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Bidding Procedures attached as Exhibit 1 are fair, reasonable, and appropriate, and are designed to maximize the value to be achieved from the Sales.

B. The Assumption and Assignment Procedures provided for herein are fair, reasonable, and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code.

C. The Debtors have articulated good and sufficient business reasons for this Court to approve: (i) the Bidding Procedures, including the scheduling of bid deadlines, auctions, and sale hearings with respect to the proposed Sale and the form and manner of notices related thereto; (ii) the establishment of procedures to assume and assign the Contracts and fix the Cure Amounts and the form and manner of notices related thereto; (iii) the Debtors’ authorization to select one or more Stalking Horse Bidders, and, in their discretion, offer the Bid Protections in connection therewith, subject to further order of this Court; and subject to higher or otherwise better offers as set forth in the Bidding Procedures; and (iv) the Wind-Down Procedures.

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. The form and manner of service of the Sale Notice attached as **Exhibit 2** hereto, and the Debtors' proposed publication of the Sale Notice, as proposed in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction(s), the Sale(s), the Bidding Procedures, and the Assumption and Assignment Procedures to be employed in connection therewith, including, without limitation: (i) the date, time, and place of the Auctions (if any held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline(s) for the Sale and the date, time, and place of the Sale Hearings; (iv) the identification of the Company Assets to be sold; and (v) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

E. The Cure Notice attached hereto as **Exhibit 3** is appropriate and reasonably calculated to provide each non-debtor party to any Contracts (such parties, collectively, the "Non-Debtor Counterparties") with proper notice of the potential assumption and assignment of the applicable Contract, the proposed Cure Amount, and the Assumption and Assignment Procedures. The inclusion of any particular contract or lease on a Cure Notice shall not be deemed to be an admission that such contract or lease is an executory contract or unexpired lease of property or require or guarantee that such contract or lease will be assumed and/or assigned, and all rights of the Debtors with respect to the foregoing are reserved.

F. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sales.

G. The entry of this order (the "Bidding Procedures Order") is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein, as they pertain to the entry of this Bidding Procedures Order, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

The Bidding Procedures

3. The Bidding Procedures are fully incorporated and approved in their entirety. All dates and deadlines set forth in the Bidding Procedures are hereby established, subject to the terms of the Bidding Procedures. The Bidding Procedures shall govern the submission, receipt, and analysis of all bids relating to the sale or disposition of all or any portion of the Company Assets under section 363 of the Bankruptcy Code (the “Asset Sale”). In addition to one or more Asset Sales, the Debtors are further authorized to solicit any other type of strategic transaction involving the Debtors and/or any or all of the Company Assets, including, without limitation, a financing process for the potential raising of debt or equity financing through a chapter 11 plan of reorganization (any of the immediately foregoing, a “Recapitalization Transaction”, and, any of the foregoing, including an Asset Sale, a “Potential Transaction”). Any party desiring to propose a Potential Transaction shall comply with this Bidding Procedures Order, including the Bidding Procedures. The Debtors are authorized to schedule one or more Auctions in connection with the Bidding Procedures.

4. Potential Bidders or Qualified Bidders (other than the Stalking Horse Bidders, if any, and solely to the extent set forth in any Stalking Horse Agreement) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the

Stalking Horse Bidders, if any, and solely to the extent set forth in any Stalking Horse Agreement) will be permitted to request at any time, whether as part of the Auctions, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

Assumption and Assignment Procedures

5. The following Assumption and Assignment Procedures shall govern the assumption and assignment of the Contracts in connection with the Sale(s), and any objections related thereto:

- a. No later than twenty-one (21) days before the Track A Sale Hearing, the Debtors shall file with this Court and serve the Cure Notice on each Non-Debtor Counterparty to each of the Contracts.
- b. In the event that the Debtors identify any Non-Debtor Counterparties that were not served with the Cure Notice, the Debtors may subsequently serve (by overnight mail) such Non-Debtor Counterparty with a Cure Notice, and the following procedures will nevertheless apply to such Non-Debtor Counterparty; *provided, however*, absent further order of this Court, the Cure/Assignment Objection Deadline (defined below) with respect to such Non-Debtor Counterparty shall be 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days following service of the Cure Notice.
- c. The Cure Notice served on each Non-Debtor Counterparty shall: (i) identify each Contract; (ii) list the Cure Amount the Debtors believe is required to be paid pursuant to the Bankruptcy Code in order to effectuate the assignment of the Contract; (iii) include a statement that the assumption and assignment of such Contract is neither required nor guaranteed; and (iv) inform such Non-Debtor Counterparty of the requirement to file any Cure/Assignment Objections (defined below) by the Cure/Assignment Objection Deadline (defined below). Service of a Cure Notice does not (x) constitute, and shall not be deemed, an admission that a particular Contract is an executory contract or unexpired lease of property, or (y) confirm that the Debtors are required to assume and/or assign such Contract.
- d. Objections (a “Cure/Assignment Objection”), if any, to one or more of (i) a scheduled Cure Amount, (ii) the ability of the Stalking Horse Bidders, if any, to provide adequate assurance of future performance, and (iii) the proposed assumption, assignment, and/or transfer of such Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate

specifically to the identity of any Successful Bidder (other than the Stalking Horse Bidders, if any), must: (x) be in writing; (y) state with specificity the nature of such objection, including the amount of Cure Amount in dispute; and (z) be filed with this Court and properly served on the Debtors and the Notice Parties so as to be received no later than **4:00 p.m. (prevailing Eastern Time) on October 12, 2023** (the “Cure/Assignment Objection Deadline”), subject to subparagraph (b) above.

- e. Objections of any Non-Debtor Counterparty related solely to the identity of, and adequate assurance of future performance by, a Successful Bidder (should the Successful Bidder be any party other than a Stalking Horse Bidder, if any) must (x) be in writing, (y) state with specificity the nature of such objection, and (z) be filed with this Court and properly served on the Debtors and the Notice Parties so as to be received no later than the Post-Auction Objection Deadline (defined below) and shall be heard at the respective Sale Hearing unless otherwise ordered by this Court or agreed to by the Debtors and the Successful Bidder.
- f. Any Non-Debtor Counterparty to a Contract that fails to timely file and properly serve a Cure/Assignment Objection or Post-Auction Objection (as applicable) as provided herein will: (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract in the event it is assumed and/or assigned by the Debtors, and the Debtors and the assignee of the Contract shall be entitled to rely solely upon the Cure Amounts scheduled on the Cure Notice; and (ii) be deemed to have consented to the assumption, assignment, and/or transfer of such Contract (including the transfer of any related rights and benefits thereunder) to the relevant assignee and shall be forever barred and estopped from objecting to the assumption or assignment of such Contracts to the applicable assignee or asserting or claiming against the Debtors or the applicable assignee that any additional pre-assignment amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Contract, that any related right or benefit under such Contract cannot or will not be available to the relevant assignee, or that the assignee failed to provide such Non-Debtor Counterparty with adequate assurance of future performance.
- g. If a Non-Debtor Counterparty files an objection satisfying the requirements of these Assumption and Assignment Procedures that is not consensually resolved by the respective Sale Hearing, such unresolved objection will be considered at the Sale Hearing; *provided, however*, any Contract that is the subject of a Cure/Assignment Objection with respect solely to the amount of the Cure Amount may be assumed and assigned prior to resolution of such objection, so long as the Debtors or assignee, as applicable, (i) pay any undisputed Cure Amount on or before (x) the Closing Date (as defined in a Stalking Horse Agreement, should the Debtors enter into one or more such agreements) or, (y) in the event the Successful Bidder is a party other than a Stalking Horse Bidder, if any, the date designated for consummating the Sale under such Successful Bidder’s Definitive Purchase Agreement, and (ii) appropriately reserve funding for the disputed portion of the Cure Amount pending resolution of the dispute.

- h. The Debtors' assumption and/or assignment of a Contract is subject to approval by this Court and consummation of the Sale. Absent entry of a Sale Order approving the assumption and/or assignment of the Contracts and consummation of the Sale, the Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

Notice Procedures

6. The Sale Notice in the form attached hereto as **Exhibit 2** is approved, and the Debtors are authorized to make non-substantive or immaterial changes to the Sale Notice or to fill in missing information, in each case to the extent not inconsistent with this Bidding Procedures Order, prior to service or publication of the Sale Notice.

7. One (1) business day or as soon as reasonably practicable after entry of this Bidding Procedures Order, the Debtors will (i) serve the Sale Notice to the Sale Notice Parties and (ii) subject to applicable submission deadlines, cause a form of the Sale Notice to be published, on one occasion, in the national edition of *USA Today*, *New York Times*, *The Wall Street Journal*, or other national publication, and post the Sale Notice and the Bidding Procedures Order on the website of Kurtzman Carson Consultants LLC ("**KCC**"), the Debtors' claims and noticing agent.

8. No other or further notice of the Sales, the Auctions, the Sale Hearings, or the Sale Objection Deadline shall be required. Service and publication of the Sale Notice as set forth herein is deemed to satisfy the notice requirements under Bankruptcy Rules 2002, 6004, and 6006, as well as Local Rule 6004-1, and to otherwise comply in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

9. One (1) business day or as soon as reasonably practicable following conclusion of the Auctions, the Debtors shall file a notice on this Court's docket identifying the Successful Bidder(s) and any applicable Backup Bidder(s).

10. The form of Cure Notice attached hereto as **Exhibit 3** and the Assumption and Assignment Procedures set forth herein are approved and are deemed to be sufficient to provide

effective notice to the Non-Debtor Counterparties of the Debtors' intent to potentially assume and assign some or all of the Contracts and the Debtors' proposed Cure Amounts. Such notice is deemed to satisfy the notice requirements under Bankruptcy Rules 2002, 6004, and 6006, as well as Local Rule 6004-1, and to otherwise comply in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

Auctions and Sale Hearings

11. **Bid Deadlines**. As further described in the Bidding Procedures, (i) the Indication of Interest Deadline (as defined in the Bidding Procedures) for all Bids is 4:00 p.m. (prevailing Eastern Time) on September 18, 2023, and (ii) the deadline for (a) Track A Bids is **4:00 p.m. (prevailing Eastern Time) on October 16, 2023**, and the deadline for (b) Track B Bids is **4:00 p.m. (prevailing Eastern Time) on November 9, 2023**. No Bid shall be deemed to be a Qualified Bid unless such Bid meets the requirements set forth in the Bidding Procedures.

12. **Sale Objection Deadline**. Subject to paragraph 18, the Sale Objection Deadline is **4:00 p.m. (prevailing Eastern Time) on October 2, 2023**. A Sale Objection must be filed with this Court and served in the manner set forth below so as to be actually received no later than the Sale Objection Deadline.

13. **Auction; Cancellation of Auction**. Depending on the Bids received in accordance with the Bidding Procedures, the Debtors may conduct one or more Auctions for the proposed Sales. If at least one Qualified Bid is received in accordance with the Bidding Procedures with regard to the same or to overlapping Company Assets, the Debtors shall be permitted to hold the Auctions in accordance with the Bidding Procedures, which Track A Auction shall take place on **October 19, 2023 at 10:00 a.m. (prevailing Eastern Time)**, and which Track B Auction shall take place on **November 9, 2023 at 10:00 a.m. (prevailing Eastern Time)** at the offices of counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the

Americas, New York, New York 10019, or such later time or such other place as the Debtors shall designate. In the event that the Debtors designate a later time or place for the Auctions, they shall (i) notify all Qualified Bidders (as defined in the Bidding Procedures) who have submitted Qualified Bids, and (ii) file notice of such change with this Court. Only (a) Qualified Bidders (including the Stalking Horse Bidder, if any) and their legal and financial advisors, and (b) actual creditors of the Debtors (provided that they give at least three (3) business days' notice to the Debtors' counsel of their intention to attend an Auction via email to Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Joshua A. Esses (jesses@paulweiss.com) and Vida Robinson (virobinson@paulweiss.com), shall be entitled to attend an Auction.

14. In the event that (i) the Debtors designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement, if no Qualified Bids other than the Stalking Horse Bid are received in accordance with the Bidding Procedures, or (ii) only one Qualified Bid is received, then the Debtors may decide, in the Debtors' reasonable business judgment, to cancel the applicable Auction and designate the Stalking Horse Bid or Qualified Bid as the Successful Bid (as defined in the Bidding Procedures) and pursue entry of an order approving a Sale to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement.

15. If an Auction is cancelled, the Debtors shall promptly file a notice of cancellation of the applicable Auction and designation of the Stalking Horse Bid or Qualified Bid as the Successful Bid, if applicable.

16. Each Qualified Bidder participating in an Auction will be required to confirm on the record at the Auction, that (i) it has not engaged in any collusion with respect to the Bidding Procedures and the Auction, (ii) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (iii) the Qualified Bidder

agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

17. **Notice for Non-Debtor Counterparties.** The Debtors shall file with this Court and serve within two (2) days of the applicable Auction to any Non-Debtor Counterparty that is implicated by the Successful Bid or Backup Bid (if any) a notice containing the identity of the Successful Bidder and Backup Bidder (if any).

18. **Post-Auction Objection Deadline.** The deadline to object only to (i) the conduct at the applicable Auction (if held) or (ii) solely with respect to the Non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not a Stalking Horse Bidder) (such a limited objection, a “Post-Auction Objection”) is **October 23, 2023 at 4:00 p.m. (prevailing Eastern Time)** with respect to the Track A Sale Hearing and **November 13, 2023 at 4:00 p.m. (prevailing Eastern Time)** with respect to the Track B Sale hearing (these deadlines, together, the “Post-Auction Objection Deadlines”). A Post-Auction Objection must be filed with this Court and served in the manner set forth below so as to be actually received no later than the Post-Auction Objection Deadline.

19. **Sale Hearings.** The Track A Sale Hearing shall take place on **October 26, 2023, at ___ a.m/p.m. (prevailing Eastern Time)** and the Track B Sale Hearing, if any, shall take place on **November 16, 2023 at ___ a.m/p.m. (prevailing Eastern Time)**. At the Sale Hearings, the Debtors will seek the entry of a Sale Order approving and authorizing the Sale to the Successful Bidder(s). The Sale Hearings (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court or through the filing of a notice or other document on this Court’s docket.

Objection Procedures

20. Any party that seeks to object to the proposed Sale(s) or related relief shall file a formal written objection that complies with the objection procedures set forth herein.

21. Objections, if any, must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with this Court; and (vi) served on the Debtors and the Notice Parties, in each case so as to be received no later than the Sale Objection Deadline, Cure/Assignment Objection Deadline, or the applicable Post-Auction Objection Deadline (collectively, the “Deadlines”), as applicable.

22. Failure to file an objection on or before the applicable Deadline (i) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with a Successful Bidder, and (ii) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto free and clear of any interest in the Company Assets.

Approval of Designation of Stalking Horse Bidder, Bid Protections, and Backup Bidder

23. Pursuant to the Bidding Procedures, the Debtors are authorized, but not directed, to select one or more bidders to act as the Stalking Horse Bidder for all or any part of the Company Assets and enter into a Stalking Horse Agreement with each Stalking Horse Bidder so selected.

24. In the event that the Debtors enter into a Stalking Horse Agreement, within two (2) business days of entering into such agreement, the Debtors shall file with the Court and serve on the Sale Notice Parties a notice (the “Stalking Horse Notice”) which shall include, among other

things: (i) the identification of the Stalking Horse Bidders; (ii) a copy of the Stalking Horse Agreements; and (iii) the deposit paid by the Stalking Horse Bidders.

25. The Debtors are authorized to seek approval, in connection with a Stalking Horse Agreement, of Bid Protections for such Stalking Horse Bidder on no less than five (5) business days' notice of any proposed hearing on such motion, with objections due at 4:00 p.m. (prevailing Eastern Time) one (1) business day prior to such a hearing.

Approval of Wind-Down Procedures

26. The Wind-Down Procedures, as set forth in the Motion, are hereby approved.

27. On the date that is five (5) business days following the filing of the Wind-Down Notice, subject to the Court's availability, the Court shall hold a hearing to consider entry of the Wind-Down Order, unless such hearing is cancelled in accordance with paragraph 28, below.

28. At 4:00 p.m. (prevailing Eastern Time) on the date that is two (2) business days prior to the Wind-Down Order Hearing, any party that objects to the relief requested in the Wind-Down Order shall file an objection with this Court. If no objections are timely filed to entry of the Wind-Down Order, the Court may, in its sole discretion, cancel the Wind-Down Order Hearing and immediately enter the Wind-Down Order without a hearing (and before the Wind-Down Order Hearing was scheduled to occur).

Other Relief Granted

29. Absent a subsequent order of this Court to the contrary, this Bidding Procedures Order shall be binding in all respects upon any trustees, examiners, "responsible persons," or other fiduciaries appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code.

30. Nothing herein shall be deemed to or constitute the assumption, assignment, assumption and assignment, or rejection of any executory contract or unexpired lease.

31. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and this Bidding Procedures Order shall be effective immediately and enforceable upon its entry.

32. Notwithstanding anything to the contrary in this Bidding Procedures Order, the Bidding Procedures, or the Assumption and Assignment Procedures, the Debtors may extend in their discretion, or seek an extension from this Court, the deadlines set forth in this Bidding Procedures Order or the Bidding Procedures, including, but not limited to, the Bid Deadline (as this term is defined in the Bidding Procedures).

33. All persons or entities (whether or not a Qualified Bidder) that participate in the bidding process for a Potential Transaction will be deemed to have knowingly and voluntarily (i) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (ii) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

34. In the event of any conflict between this Bidding Procedures Order and the Motion and/or the Bidding Procedures, this Bidding Procedures Order shall govern in all respects.

35. This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation, interpretation, and enforcement of this Bidding Procedures Order.

Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF PROTERRA INC AND PROTERRA OPERATING COMPANY, INC.

On August 7, 2023, Proterra Inc and Proterra Operating Company, Inc. (collectively, the “Debtors” or the “Company”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

On [●], 2023, the Court entered that certain *Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief* [Docket No. ____] (the “Bidding Procedures Order”), which approved, among other things, (a) procedures pursuant to which the Debtors are authorized to solicit and pursue (such procedures, the “Bidding Procedures”) one or more sales or dispositions (each, a “Sale”) of all or any portion of the Debtors’ assets (the “Company Assets”) under section 363 of the Bankruptcy Code (each, an “Asset Sale”) and any other type of strategic transaction involving the Debtors and/or the Company Assets, including, without limitation, a financing process for the potential raising of debt or equity financing through a chapter 11 plan of reorganization (any of the immediately foregoing, a “Recapitalization Transaction”, and, any of the foregoing, including an Asset Sale, a “Potential Transaction”), (b) the scheduling of a hearing to approve (i) the Sale of the Track A Assets (defined below) and (ii) the Sale of the Track B Assets (defined below), each free and clear of any liens, claims, and encumbrances under section 363 of the Bankruptcy Code, and (c) procedures in connection with the assumption and assignment of any executory contracts or unexpired leases the Debtors seek to have assumed and assigned in connection with a Potential Transaction. ***All interested bidders should carefully read the Bidding Procedures Order and these Bidding Procedures in their entirety.***¹

¹ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order or the Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors’ Entry Into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All Or Substantially All of the Debtors’ Assets Free and Clear

Copies of the Bidding Procedures Order or other documents related thereto are available upon request to Kurtzman Carson Consultants LLC by calling 888-251-3076 (USA or Canada) or 310-751-2617 (International) or visiting the Debtors' restructuring website at www.kccllc.net/proterra.

All due diligence requests must be directed to Moelis & Company LLC, Attn: Rick Polhemus (Rick.Polhemus@moelis.com); John Kimm (john.kimm@moelis.com); Patrick Layton, (Patrick.Layton@moelis.com); Bassam Latif (Bassam.Latif@moelis.com); and Dave McGuinness (Dave.McGuinness@moelis.com).

I. Overview

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct a marketing process, and if necessary, one or more auctions (each, an "Auction"), for one or more Potential Transactions.

The Company has three business lines: Proterra Transit; Proterra Energy (which includes Proterra Valence); and Proterra Powered (collectively, the "Business Lines"), each as further described in the First Day Declaration. The Company will consider bids for the purchase of all or any portion of the Company Assets (including all or any portion of the Business Lines or any combination thereof) (a "Sale Bid"). The Company will also consider bids for any other type of strategic transaction involving the Debtors and/or all or any portion of the Company Assets, including, without limitation, a Recapitalization Transaction (a "Recapitalization Transaction Bid") and, together with any Sale Bids, the "Bids" and each, a "Bid").

Solely for purposes of determining the applicable Bidding Procedures timeline applicable to a given Bid, Bids are categorized as follows:

- **Track A Bids:** A "Track A Bid" means any Bid for a transaction including all or any portion of the assets of (i) Proterra Transit or (ii) Proterra Energy (such assets ((i) and (ii)), collectively, the "Track A Assets"). For the avoidance of doubt, any Bid for a transaction including all or any portion of all three of Debtors' Business Lines constitutes a Track A Bid.
- **Track B Bids:** A "Track B Bid" means any Bid for a transaction including no Track A Assets (except, in the Debtors' business judgement, Proterra Valence). For the avoidance of doubt, any Bid for a transaction including only all or any portion of the assets of Proterra Powered and Proterra Valence (such assets, collectively, the "Track B Assets") constitutes a Track B Bid.

Of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief [Docket No. ____] (the "Motion"), as applicable.

The Debtors reserve the right to modify these Bidding Procedures, including without limitation, to extend the deadlines and modify the requirements set forth herein or impose additional terms and conditions at any time to the extent they determine, in their reasonable business judgment, that doing so will best promote the goals of the bidding process, including during an Auction.

II. Key Sales Process Dates

The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept (i) non-binding indications of interest (an “Indication of Interest”) on or before **September 18, 2023, at 4:00 p.m. (prevailing Eastern Time)** (as may be extended by the Debtors in their reasonable business judgment through notice to all Potential Bidders, the “Indication of Interest Deadline”), (ii) Track A Bids until **October 16, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Track A Bid Deadline”), and (iii) Track B Bids until **November 6, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Track B Bid Deadline” and, together with the Track A Bid Deadline, the “Bid Deadlines”). The other key dates for the marketing process are as follows:

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ²	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Service and Publication of Sale Notice	1 business day after entry of Bidding Procedures Order or as soon as reasonably practicable thereafter	
Initial Indication of Interest (“IOI”) Deadline	Monday, September 18, 2023	
Debtors’ Deadline to File a Proposed Form of Sale Order	Monday, September 18, 2023	
Debtors’ Deadline to File and Serve Cure Notices	Thursday, September 21, 2023	
Sale Objection Deadline	Monday, October 2, 2023	
Cure/Assignment Objection Deadline	Thursday, October 12, 2023	
Qualified Bid Submission Deadline (can be moved at Debtors’ discretion)	Monday, October 16, 2023	Monday, November 6, 2023
Determination of Qualified Bids	Wednesday, October 18, 2023	Wednesday, November 8, 2023

² Unless otherwise indicated, all deadlines (but not events) are 4:00 p.m. (prevailing Eastern Time).

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ²	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Auction (if necessary)	Thursday, October 19, 2023 @ 10:00 a.m. (ET)	Thursday, November 9, 2023 @ 10:00 a.m. (ET)
Identification of Successful Bidder and Backup Bidder, if any	Friday, October 20, 2023 (or as soon as reasonably practicable thereafter)	Friday, November 10, 2023 (or as soon as reasonably practicable thereafter)
Post-Auction Objection Deadline	Monday, October 23, 2023	Monday, November 13, 2023
Deadline to File Replies in Connection with Sale	Tuesday, October 24, 2023 @ 10:00 a.m. (ET)	Tuesday, November 14, 2023 @ 10:00 a.m. (ET)
Sale Hearing	Thursday, October 26, 2023	Thursday, November 16, 2023
Closing Date	As soon as reasonably practicable following entry of a Sale Order	As soon as reasonably practicable following entry of a Sale Order

The Debtors may elect to move Track A Bids from the schedule entitled “Track A Bids” above (the “Track A Schedule”) to the schedule entitled “Track B Bids” above (the “Track B Schedule”) to the extent the Debtors determine, in their reasonable business judgment, that doing so will best promote the goals of the bidding process, and any Bid that the Debtors move to the Track B Schedule shall be deemed to be a Track B Bid rather than a Track A Bid for purposes of these Bidding Procedures.

III. PUBLIC ANNOUNCEMENT OF AUCTION

As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall: (a) serve on the Sale Notice Parties a notice of the Auctions and Sales (the “Sale Notice”); (b) post the Sale Notice on their restructuring website, www.kccllc.net/proterra; and (c) publish the Sale Notice, with any modifications necessary for ease of publication, in *USA Today*, *New York Times*, *The Wall Street Journal*, or another national publication, to provide notice to any other potential interested parties.

BIDDING PROCESS

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer for any combination of the Company Assets. The Debtors, in consultation with their advisors, will consider any Bid for all or any portion of the Company Assets (including all or any portion of the Business Lines or any combination thereof), including (i) any Bids for all or substantially all of the Company Assets (a “Whole Company Bid”) and (ii) Bids for less than all or substantially all of the Company Assets (a “Partial Bid”), including, among other possibilities, multiple Bids submitted by the same bidder or one or more Bids submitted by a consortium acting as a single bidder) with the Debtors’ prior written consent in any combination. The Debtors believe that a Bid that preserves the going concern value of the Debtors’ Business Lines (either operated together or separately) is likely to be considered higher or better than a Bid that does not.

B. Stalking Horse Bidder and Bid Protections.

The Debtors are authorized, but not obligated, in an exercise of their business judgment, to: (a) select one or more Qualified Bidders to act as Stalking Horse Bidders, and enter into a Stalking Horse Agreement with each Stalking Horse Bidder so selected; and (b) in connection with any Stalking Horse Agreement with a Stalking Horse Bidder, provide Bid Protections for any Stalking Horse Bidder, subject to Court approval after notice (to be provided five (5) business days’ prior to a hearing to approve such Bid Protections) and a hearing. No later than two (2) business days after the selection of a Stalking Horse Bidder, the Debtors shall file a notice with the Court of such selection that includes a copy of the Stalking Horse Agreement.

After designating the Stalking Horse Bidders, if any, and designating other Qualified Bidders, if any, the Debtors may then hold an Auction for the applicable Company Assets.

C. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, an entity interested in consummating a Potential Transaction must deliver the following to the Debtors (unless waived by the Debtors in their reasonable business judgment) (any such entity, a “Potential Bidder”):

(a) an executed confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”);

(b) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the interested party (i) has the financial wherewithal to consummate the applicable Potential Transaction and (ii) intends to access the Data Room (as defined below) for a purpose consistent with these Bidding Procedures; and

(c) any other evidence the Debtors may reasonably request to evaluate the entity's fitness to participate in the bidding process or ability to timely acquire the Company Assets.

D. Non-Binding Indications of Interest.

To become a Qualified Bidder (as defined below), a Potential Bidder must submit an Indication of Interest on or before the Indication of Interest Deadline. The Indication of Interest must be submitted in accordance with the following requirements (unless waived by the Debtors in their business judgment):

Delivery of Indication of Interest. The Indication of Interest must be addressed and delivered in writing via email by no later than the Indication of Interest Deadline, and directed to Moelis & Company LLC, Attn: Rick Polhemus (Rick.Polhemus@moelis.com); John Kimm (john.kimm@moelis.com); Patrick Layton (Patrick.Layton@moelis.com); Bassam Latif (Bassam.Latif@moelis.com); and Dave McGuinness (Dave.McGuinness@moelis.com), with a copy to Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Paul Basta (pbasta@paulweiss.com); Robert A. Britton (rbritton@paulweiss.com); Michael J. Colarossi (mcolarossi@paulweiss.com); and Joshua A. Esses (jesses@paulweiss.com) (an email to such email addresses, an "Email Notice").

Scope of Potential Transaction. The Indication of Interest must include a reasonably detailed description of the Company Assets which the Potential Bidder seeks to acquire and the liabilities which the Potential Bidder seeks to assume.

Valuation. The Indication of Interest must indicate the proposed consideration that the Potential Bidder is prepared to provide for the applicable Company Assets. For the avoidance of doubt, this should be broken out and allocated by each Business Line or component thereof, as applicable.

Key Valuation Assumptions. The Indication of Interest must include a reasonably detailed description of how the Potential Bidder arrived at the valuation indicated, including describing the Potential Bidder's valuation approach and methodology used to determine the proposed consideration to be provided by the Potential Bidder. In addition, the Indication of Interest must include any material assumptions, terms, conditions, or open due diligence points that may impact the Potential Bidder's view on valuation upon which the Indication of Interest is based, whether business, operational, financial, tax, or otherwise, as well as any other significant considerations the Potential Bidder believes would be helpful to the Debtors in evaluating the Potential Bidder's proposal.

Financing. The Indication of Interest should include a detailed description of the intended sources and uses of funds that the Potential Bidder's contemplates needing to close the Potential Transaction.

Identity & Credit Worthiness. To the extent known by the Potential Bidder, the Indication of Interest must include the identity (including full legal name) of any entity proposed to acquire Company Assets or provide consideration to the Debtors pursuant to the Potential Transaction and a description of such entity's jurisdiction, form of organization and affiliates, ultimate ownership, and financial capacity. If the identity of such entity is not known by the Potential Bidder or such entity does not have the creditworthiness on its own to fully fund the contemplated transaction, the Indication of Interest should specify whether the Potential Bidder is willing to provide guarantees of such entity's commitments in connection with a potential transaction from creditworthy entities.

Internal Approvals. The Indication of Interest must specify any additional internal approvals that would be required to execute a definitive agreement governing the Potential Transaction.

Due Diligence Requirements. The Indication of Interest must describe in reasonable detail the nature, timing, and extent of the key areas and specific matters needed to complete the Potential Bidder's due diligence review and any additional information, including any specific concerns, that the Potential Bidder would need to be addressed in order to submit a final binding proposal and finalize a definitive agreement governing the Potential Transaction.

Contacts. The Indication of Interest must include contact details (including names, telephone numbers, and email addresses) of the individuals who will be prepared to discuss and answer any questions of the Debtors regarding the Indication of Interest.

Note that submitting an Indication of Interest by the Indication of Interest Deadline does not obligate the submitting party to submit a formal bid or to participate in the sale process and does not exempt the submitting party from also having to submit a Qualified Bid by the Bid Deadlines to participate in any Auction, each as defined below.

E. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room (the "Data Room") and to receive additional non-public information regarding the Debtors. **Only Potential Bidders that enter into a Confidentiality Agreement with the Debtors will be permitted to conduct any due diligence that includes confidential information.** The Debtors will use commercially reasonable efforts to provide due diligence information to any such Potential Bidder, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post confidential information concerning the Company Assets to the Debtors' electronic data room which will be made available to Potential Bidders. Unless extended by the Debtors in their reasonable business judgment, each Potential Bidder's due diligence period will end on the applicable Bid Deadline, after which the Debtors shall have no obligation to furnish any due diligence information.

The Debtors need not furnish any confidential information relating to the Company Assets, liabilities of the Debtors, or any Asset Sale or Recapitalization Transaction to any person or entity except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement and requested by such Potential Bidder. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided*, that the Debtors may decline to provide (or elect to withdraw access to) due diligence information to any Potential Bidder who, at such time and in the Debtors' reasonable business judgment, has not established (or there is otherwise a reasonable basis to doubt) that such Potential Bidder intends in good faith to, or has the capacity to, consummate a Potential Transaction. To the extent a Potential Bidder no longer intends in good faith to, or lacks the capacity to, consummate a Potential Transaction, such Potential Bidder shall promptly notify the Debtors through Email Notice.

The Debtors also reserve the right to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder, including a Potential Bidder the Debtors determine is (or is affiliated with) a competitor or supplier of the Debtors, or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Debtors' reasonable business judgment, may risk unduly placing the Debtors at a competitive disadvantage or subject them to regulatory scrutiny. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any entity that is not determined to be a Potential Bidder.

All due diligence requests are to be sent to the Debtors through Email Notice.

1. Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids or any Potential Transaction relating to the Debtors between or amongst Potential Bidders shall be conducted exclusively through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in writing to such communication; *provided*, that if such consent is given, a representative of the Debtors shall be present for or party to any such communications (unless otherwise agreed by the Debtors in their sole discretion).

2. Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with any reasonable requests of the Debtors or their advisors for additional information or due diligence access regarding qualification as a Potential Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the applicable Company Assets. Failure by a Potential Bidder to comply with such reasonable requests may be a basis for the Debtors to determine that such bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid (a "Non-Qualifying Bid").

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the Chapter 11 Cases, in each case in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of such Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures; and (iv) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Potential Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

The Debtors encourage all Potential Bidders interested in participating in these marketing processes to promptly notify the Debtors and their advisors of such interest. Such Potential Bidders should describe, in as much specificity and as soon as practically feasible, the scope of Company Assets that are envisioned to be encompassed by any Indication of Interest or Bid that such Potential Bidders expect to submit, or if such Potential Bidders are interested in participating in a Recapitalization Transaction, such Potential Bidders should submit term sheets that allow the Debtors, in consultation with their advisors, to assess, among other things, the feasibility of such Recapitalization Transaction standing alone, or in combination with complementary Bids or negotiations related thereto.

F. Qualified Bidders.

1. A "Qualified Bidder" is a Potential Bidder who satisfies the following requirements (unless waived by the Debtors in their reasonable business judgment): (a) the Potential Bidder has demonstrated the financial capability to consummate the applicable Asset Sale or Recapitalization Transaction (as determined by the Debtors); (b) the Potential Bidder's Bid is a Qualified Bid; (c) the Potential Bidder submitted an Indication of Interest by the Indication of Interest Deadline; and (d) the Debtors have determined the Potential Bidder should be considered a Qualified Bidder. Within two (2) days after the applicable Bid Deadline, the Debtors' advisors will notify each Potential Bidder whether such Potential Bidder is a Qualified Bidder. Any Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures.

2. If any Potential Bidder is determined by the Debtors not to be a Qualified Bidder, the Debtors will refund such Potential Bidder's Deposit and all accumulated interest, if any, thereon within five (5) business days of the applicable Bid Deadline.

3. For the avoidance of doubt, the Debtors expressly reserve the right to notify a Potential Bidder that its Bid is a Non-Qualifying Bid and permit such Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.

4. Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the applicable Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided*, that, for the avoidance of doubt, any Qualified Bid may be improved at the applicable Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures, and the Debtors expressly reserve the right to request additional diligence information and assurances necessary to assess and ensure continued compliance (including additional information, assurances, or commitments regarding the applicable Qualified Bidder's financial capability to consummate the transactions contemplated by such improved Qualified Bid).

G. Bid Requirements.

A Bid by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements"), as determined by the Debtors in their reasonable business judgment, shall constitute a "Qualified Bid". Any Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

1. Documentation.

- (a) With respect to a proposed Asset Sale, each Bid must be accompanied by a duly authorized and executed asset purchase agreement ("Purchase Agreement"), based on either the form asset purchase agreement attached hereto as **Exhibit 4** or the Stalking Horse Agreement (if one exists), an electronic copy of such Purchase Agreement in Microsoft Word format, with a redline to the form asset purchase agreement, and in the case of an Auction with a Stalking Horse Bidder, a redline of such Purchase Agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse Agreement provided by the Debtors to Potential Bidders. Each such Purchase Agreement must provide for payment in cash at closing of the Bid Protections to the Stalking Horse Bidder, if any.
- (b) With respect to another form of Potential Transaction, the Bid must be accompanied by a detailed transaction document capable of being executed, whether that be a credit agreement, reorganized equity purchase agreement, plan term sheet, or otherwise, as applicable.

The documents described in 1(a) and 1(b), above, are each defined as the “Qualified Bid Documents”.

2. Purchase Price.

- (a) With respect to a proposed Asset Sale, each Bid must clearly set forth the consideration to be provided for the applicable Company Assets, including the allocation of responsibility for the payment of any cure costs and otherwise identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities.
- (b) With respect to another form of Potential Transaction, the Bid must set forth the cash or other consideration to be furnished, including and identifying separately any cash and non-cash components and a description of any liabilities to be assumed by such Potential Bidder.

The consideration described in 2(a) and 2(b), above, is each defined as the “Purchase Price”.

3. Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “Deposit”).

4. Terms; Specify Acquired Assets and Assumed Liabilities.

- (a) With respect to a proposed Asset Sale, the Bid must identify the Company Assets (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Asset Sale.
- (b) With respect to a Recapitalization Transaction, the Bid must describe (i) in reasonable detail the terms and conditions of such Recapitalization Transaction and (ii) in the event the Bid is a plan term sheet or involves a chapter 11 plan of reorganization, the contemplated chapter 11 plan of reorganization must comply with the applicable requirements of the Bankruptcy Code.

5. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the Potential Transaction set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Debtors, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the applicable Company Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors.
6. Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.
7. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director, or equity holder of the Debtors, or any entity affiliated with any current or former officer, director, or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid, including any employment or compensation arrangements being negotiated or agreed to between the Qualified Bidder and any employee of the Debtors. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid at the Auction). Each Bid must also include contact information for the specific persons and counsel whom Moelis & Company LLC, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Young Conaway Stargatt & Taylor, LLP should contact regarding such Bid.
8. Adequate Assurance of Future Performance. Each Bid must (i) reasonably identify any executory contracts and unexpired leases of the Debtors to be assumed or assumed and assigned in connection with the Potential Transaction, and (ii) demonstrate, in the Debtors' reasonable business judgment, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.
9. Binding and Irrevocable. A Qualified Bidder's Bid for the applicable Company Assets shall be irrevocable unless and until the Debtors notify such Qualified Bidder that such Bid has not been approved as a Successful Bid or a Backup Bid at the applicable Sale Hearing.

10. Expenses; Disclaimer of Fees. Each Bid (other than the Stalking Horse Bids, if any (solely to the extent set forth in the Stalking Horse Agreement(s))) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bids, should the Debtors have designated one or more Stalking Horse Bidders, and in that case, solely to the extent set forth in the Stalking Horse Agreement(s)) will be permitted to request at any time, whether as part of an Auction, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

11. Authorization. A Bid must include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to submit the Bid and consummate the proposed transaction; *provided* that if the bidder is an entity specially formed for the purpose of effectuating the proposed transaction, then the bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the submission of the Bid and consummation of the proposed transaction by equity holder(s) of such bidder.

12. As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Company Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or such assets in making its Bid; and (iii) did not and will not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the applicable Company Assets or the completeness of any information provided in connection therewith or at an Auction, except those expressly stated in the Stalking Horse Agreement (if applicable).

13. Adherence to Bidding Procedures. By submitting a Bid, each Qualified Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of these Bidding Procedures and after the conclusion of any Auction, agrees not to submit a Bid, or seek to reopen the Auction.

14. Government Approvals. Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Asset Sale or Recapitalization Transaction, together with evidence satisfactory to the Debtors, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.

15. Government Approvals Timeframe. Each Bid must set forth an estimated timeframe for obtaining any required, governmental, licensing, regulatory, or other approvals or consents for consummating any proposed Asset Sale or Recapitalization Transaction.

16. Consent to Jurisdiction. By submitting a Bid, each Qualified Bidder agrees and shall be deemed to have agreed, to submit to the jurisdiction of the Court and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of bids, the Auctions, if any, the construction and enforcement of these Bidding Procedures, the Asset Sale or Recapitalization Transaction documents, and the closing, as applicable.

17. Bid Deadlines. Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** (a) by the Track A Bid Deadline—on or before **4:00 p.m. (prevailing Eastern Time) on October 16, 2023**—if such Bid is a Track A Bid, and (b) by the Track B Bid Deadline—on or before **4:00 p.m. (prevailing Eastern Time) on November 6, 2023**—if such Bid is a Track B Bid.

- (a) **Debtors**. Proterra Inc, 1815 Rollins Road, Burlingame, California 94010 Attn: Jeff Mitchell (jmitchell@proterra.com)
- (b) **Debtors' Counsel**. Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Paul Basta (pbasta@paulweiss.com); Robert A. Britton (rbritton@paulweiss.com); Michael J. Colarossi (mcolarossi@paulweiss.com); and Joshua A. Esses (jesses@paulweiss.com)
- (c) **Debtors' Co-Counsel**. Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 Attn: Pauline Morgan (pmorgan@ycst.com); and Andrew Magaziner (amagaziner@ycst.com)
- (d) **Debtors' Financial Advisors**. Moelis & Company LLC, Attn: Rick Polhemus (Rick.Polhemus@moelis.com); John Kimm (john.kimm@moelis.com); Patrick Layton (Patrick.Layton@moelis.com); Bassam Latif (Bassam.Latif@moelis.com); and Dave McGuinness (Dave.McGuinness@moelis.com)

provided, however, that the Debtors reserve the right to reschedule or waive any Bid Deadline and related marketing process deadlines and hearing dates in their sole discretion.

H. Right to Credit Bid

At an Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor") shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's undisputed claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code, as it relates to the Company Assets; *provided, however*, any Secured Creditor that intends to participate in an Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) business days prior to the applicable Bid Deadline that it intends to submit a Credit Bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential Credit Bid.

I. Allocation of Value.

At any time, depending on the number and nature of the Bids submitted at the Auctions, the Debtors, in consultation with their advisors, may require that Qualified Bidders submitting Whole Company Bids or bids for all or any portion of multiple Business Lines to allocate the values of such Bid attributable to certain Company Assets or Business Lines, including the assets of Proterra Transit, Proterra Energy, Proterra Powered, and Proterra Valence, for purposes of these Bidding Procedures only.

J. Auctions.**1. Qualified Partial Joint Bids.**

If one or more Partial Bids that constitute Qualified Bids are received, then the Debtors, in consultation with their advisors, may (a) elect to conduct a sub-auction for a portion of the Company Assets subject to a given Auction, (b) oversee and facilitate a series of negotiations among all or any portion of the Qualified Bidders that submitted such Partial Bids, or (c) otherwise pursue any process that the Debtors, in consultation with their advisors, believe will result in a value-maximizing joint Bid for all or any portion of the Company Assets (the “Qualified Partial Joint Bid,” and such Qualified Bidders, the “Qualified Partial Joint Bidders”).

The Debtors, in consultation with their advisors and in the exercise of their reasonable business judgment may allow such Qualified Partial Joint Bid to participate in an Auction. After any designation of a Qualified Partial Joint Bid, (i) the Qualified Partial Joint Bidders shall supplement their respective Deposits as necessary and use reasonable best efforts to arrange revised Qualified Bid Documents reflecting their joint pursuit of the Qualified Partial Joint Bid, and (ii) the Debtors may, in consultation with their advisors, declare that any or all of the other Partial Bids of such Qualified Partial Joint Bidders shall no longer constitute Qualified Bids.

2. Cancellation of Auctions.

In the event that (i) the Debtors have entered into one or more Stalking Horse Agreements, and such Stalking Horse Agreements have been approved pursuant to the Bidding Procedures Order, if no Qualified Bids other than the Stalking Horse Bids, if any, are received in accordance with these Bidding Procedures with respect to a scheduled Auction, or (ii) only one Qualified Bid is received in connection with an Auction, then the Debtors may cancel the Auction, and may decide, in the Debtors’ reasonable business judgment, to designate the Stalking Horse Bid or only Qualified Bid as the Successful Bid for such Company Assets and pursue entry of the orders approving an Asset Sale of the Company Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement or to the Qualified Bidder.

If any Auction is cancelled, the Debtors shall promptly file a notice of cancellation of the Auction and designation of the Stalking Horse Bid or only Qualified Bid as the Successful Bid.

3. Bid Assessment Criteria.

The Debtors shall evaluate all Qualified Bids (including any Partial Bid) and identify the Qualified Bid that is, in the Debtors' judgment, the highest or otherwise best Qualified Bid(s) for the applicable Company Assets being sold at each respective Auction (the "Baseline Bid(s)"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid(s) to each Qualified Bidder at or prior to each respective Auction.

When determining the highest or otherwise best Qualified Bid(s) and selecting the Baseline Bid(s) and the Successful Bid(s) (as defined below), as compared to other Qualified Bids, the Debtors may consider the following factors in addition to any other factors that the Debtors deem appropriate (collectively, the "Bid Assessment Criteria"):

- (a) the number, type, and nature of any changes to the form of Purchase Agreement or Stalking Horse Agreement, if any, requested by the Qualified Bidder, including the type and amount of assets sought and obligations to be assumed in the Qualified Bid;
- (b) the amount and nature of the total consideration, including the assumption of liabilities;
- (c) the likelihood of the Qualified Bidder's ability to close the Asset Sale or Recapitalization Transaction and the timing thereof;
- (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents;
- (e) the tax consequences of such Qualified Bid;
- (f) the impact on employees, including the number of employees proposed to be transferred;
- (g) the assumption of liabilities, including obligations under contracts and leases;
- (h) the cure amounts to be paid; and
- (i) the terms and conditions of a transition services agreement.

4. Auction Time and Location.

The Auction in connection with the Track A Bids, if any, shall take place at Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 on **October 19, 2023 at 10:00 a.m. (prevailing Eastern Time)** or such other date, time, and/or location as selected by the Debtors. The Auction in connection

with the Track B Bids, if any, shall take place at Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 on **November 9, 2023 at 10:00 a.m. (prevailing Eastern Time)** or such other date, time, and/or location as selected by the Debtors. The Auctions, if any, shall be conducted in a timely fashion according to the procedures set forth herein.

5. The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over each Auction, if any. At the start of each Auction, the Debtors shall describe the material terms of the Baseline Bid(s) for the applicable Company Assets to be sold at such Auction. The Debtors shall maintain a written transcript of each Auction and all Bids made and announced at any Auction, if any, including the Baseline Bid(s), all applicable Overbids, and the Successful Bid.

Only (a) Qualified Bidders (including the Stalking Horse Bidder, if any) and their legal and financial advisors and (b) actual creditors of the Debtors (provided that they give at least three (3) business days' notice to the Debtors' counsel of their intention to attend an Auction via email to Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Joshua A. Esses (jesses@paulweiss.com); and Vida Robinson (virobinson@paulweiss.com), shall be entitled to attend the Auctions, if any, and the Qualified Bidders shall appear at the Auctions for which they are Qualified Bidders in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including the Qualified Partial Joint Bidders, if any) shall be entitled to bid at each Auction, if any.

The Debtors explicitly reserve the right, in their business judgment, to exercise their discretion in conducting each Auction, including determining whether to adjourn each Auction to facilitate separate discussions between any Qualified Bidders and the Debtors, as applicable.

6. Terms of Overbids.

"Overbid" means any bid made at each Auction, if any, by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

(a) **Minimum Overbid Increment.** The Overbid(s) for the Company Assets shall provide for total consideration with a value that exceeds the value of the consideration under the Baseline Bid(s) by an incremental amount that is not less than an amount to be announced at or before the commencement of any Auction (as applicable, the "Minimum Overbid Increment"), and successive Overbids shall be higher than the Prevailing Highest Bid (as defined below) by at least the Minimum Overbid Increment. The Debtors reserve the right to announce reductions or increases in the Minimum Overbid Increment at any time during each Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid or Prevailing Highest Bid may include: (a) cash; (b) assumption of liability, which shall be ascribed a value by the Debtors, in determining whether the

Minimum Overbid Increment has been met; and (c) in the case of a Bid by a Secured Creditor, a credit bid on a Secured Creditor's collateral of up to the full amount of such Secured Creditor's allowed secured claim pursuant to section 363(k) of the Bankruptcy Code.

(b) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the "Overbid Round Deadline") by which time any Overbids must be submitted to the Debtors.

(c) **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid so long as, after giving effect to the same, the terms of the Overbid are no less favorable to the Debtors' estates than any prior Bid or Overbid of such Qualified Bidder, as determined in the Debtors' reasonable business judgment, and shall otherwise comply with the terms of these Bidding Procedures.

(d) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the applicable Overbid round, an Overbid (or combination of Overbids) as being higher or otherwise better than, in the Overbid round, the Baseline Bid plus the Minimum Overbid Increment, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

7. Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment, to adjourn each Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors and the Qualified Bidders, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

8. Closing the Auctions.

(a) Each Auction, if any, shall continue until there is one Bid (or a combination of Bids) for the Company Assets to be sold at such Auction that the Debtors determine, in their reasonable business judgment, to be the highest or otherwise best Bid (or Bids) for such Company Assets. Such Bid(s) shall be declared the "Successful Bid(s)" and such Qualified Bidder(s), the "Successful Bidder(s)," at which point such Auction will be closed. Each Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at such Auction to the then Prevailing Highest

Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Court of the Successful Bid.

(b) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction at which the bidder was the Successful Bidder, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors.

(c) As soon as reasonably practicable after closing each Auction, if any, and in any event not less than one business day following closing each Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (defined below), to be filed with the Court.

(d) To the extent that any Qualified Bid is modified before, during, or after an Auction, the Debtors reserve the right to require that such Qualified Bidder adjust its deposit so that it equals ten percent (10%) of the aggregate cash portion of the Purchase Price.

9. No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating in each Auction will be required to confirm on the record at such Auction, that (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (c) the Qualified Bidder agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

K. Backup Bidder.

1. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Bid at each such Auction for the applicable assets, as determined by the Debtors in the exercise of their reasonable business judgment, (the “Auction Backup Bid”), shall be required to serve as a backup bidder (the “Auction Backup Bidder”) for such assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.

2. The identity of each Auction Backup Bidder and the amount and material terms of each Auction Backup Bid shall be announced by the Debtors at the conclusion of each Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. Each Auction Backup Bidder shall be required to keep its Bid (or if the Auction Backup Bidder submits one or more Overbids at each Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. Each Auction Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

3. Each Auction Backup Bidder shall, within one (1) business day after the conclusion of such Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Backup Bid. The Backup Bid may not be assigned to any party without the consent of the Debtors.

4. For purposes of these Bidding Procedures, “Backup Bid” and “Backup Bidder” shall mean if one or more Auctions are held, the applicable Auction Backup Bid and Auction Backup Bidder, respectively.

All Qualified Bids (other than the Successful Bid(s) and the Backup Bid(s)) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Court.

L. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business in any manner that will best promote the goals of the bidding process, or impose, at or prior to any Auction, if any, additional customary terms and conditions on the Sale of the Company Assets, including: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning any Auction, including at the Auction and/or adjourning any Sale Hearing, including in open court, without further notice; (c) modifying the Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling any Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders; and (f) rejecting any or all bids or Bids.

M. Approval of Sale Transactions.

A hearing to consider the approval of an Asset Sale subject to the Track A Schedule to a Successful Bidder and the approval of the corresponding Backup Bid, if any (the “Track A Sale Hearing”), will take place before the Honorable Brendan L. Shannon at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware on **October 26, 2023 at _:_ a.m./p.m. (prevailing Eastern Time)** (unless canceled in accordance with these Bidding Procedures).

A hearing to consider the approval of an Asset Sale subject to the Track B Schedule to a Successful Bidder and the approval of the corresponding Backup Bid, if any (the “Track B Sale Hearing,” and, together with the Track A Sale Hearing, the “Sale Hearings”), will take place before the Honorable Brendan L. Shannon at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware on **November 16, 2023 at _:_ a.m./p.m. (prevailing Eastern Time)** (unless canceled in accordance with these Bidding Procedures).

Each Sale Hearing may be adjourned or continued to a later date by the Debtors by sending notice prior to, or making an announcement at such Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party (including any Stalking Horse Bidder).

At each Sale Hearing, the Debtors, in consultation with their advisors, shall present the Successful Bid and any Backup Bid, to the Court for approval. The Sale Order submitted at each Sale Hearing shall provide that: (i) if the Successful Bid is not consummated, the Debtors may file a notice with the Court designating the applicable

Backup Bidder(s) as the applicable Successful Bidder(s), and such Backup Bidder(s) shall be deemed the Successful Bidder(s) for all purposes; and (ii) the Debtors will be authorized, but not required, to consummate all transactions contemplated by the applicable Backup Bid, once so designated as the Successful Bid, without further order of the Court or notice to any party.

N. Return of Deposits.

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Court; *provided, however*, the Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) may be forfeited to the Debtors or credited toward the Purchase Price set forth in the Successful Bid, in either case as set forth in these Bidding Procedures. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the applicable hearing to authorize the Debtors' consummation of the applicable Potential Transaction. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder (or Backup Bidder, as applicable) timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price. If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors as partial compensation for the damages caused to the Debtors and their estates as a result of such breach or failure to perform without prejudice to any claims, rights, or remedies of the Debtors or their estates for additional damages.

O. Fiduciary Out.

Nothing in these Bidding Procedures shall restrain the board of directors, board of managers, or such similar governing body of any of the Debtors or their affiliates from taking any action, or refraining from taking any action to the extent that such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

Exhibit 2

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROTERRA INC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11120 (BLS)
)
) (Jointly Administered)
)
) **Re: Docket No. ____**

NOTICE OF BIDDING PROCEDURES, AUCTION DATE, AND POTENTIAL SALES

PLEASE TAKE NOTICE that, on August 7, 2023, Proterra Inc and Proterra Operating Company, Inc. (collectively, the “Debtors” or the “Company”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that, on August 8, 2023, the Debtors filed the *Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors’ Entry Into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. ____] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that, on [●], 2023, the Court entered that certain *Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief* [Docket No. ____]

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Proterra Inc (1379); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

(the “Bidding Procedures Order”),² which approved, among other things, (a) procedures pursuant to which the Debtors are authorized to solicit and pursue (such procedures, the “Bidding Procedures”) one or more sales or dispositions of all or any portion of the Debtors’ assets (the “Company Assets”) under section 363 of the Bankruptcy Code (each, an “Asset Sale”) and any other type of strategic transaction involving the Debtors and/or the Company Assets, including, without limitation, a financing process for the potential raising of debt or equity financing through a chapter 11 plan of reorganization (any of the immediately foregoing, a “Recapitalization Transaction”, and, any of the foregoing, including an Asset Sale, a “Potential Transaction”), (b) the scheduling of a hearing to approve (i) the Sale of the Track A Assets and (ii) the Sale of the Track B Assets, each free and clear of any liens, claims, and encumbrances under section 363 of the Bankruptcy Code, and (c) procedures in connection with the assumption and assignment of any executory contracts or unexpired leases the Debtors seek to have assumed and assigned in connection with a Potential Transaction. ***All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.***

PLEASE TAKE FURTHER NOTICE the Bidding Procedures provide for the consideration of Qualified Bids (as defined therein) to acquire substantially all of the Company’s assets or separate Bids to acquire portions of the Company Assets, to the extent that the consummation of such transactions maximizes value for stakeholders and can be accomplished efficiently.

PLEASE TAKE FURTHER NOTICE that all interested parties are invited to provide materials (as described in the Bidding Procedures) to apply to become a Potential Bidder (as defined in the Bidding Procedures) and submit a Bid in accordance with the Bidding Procedures and the Bidding Procedures Order. The Bidding Procedures provide information regarding the requirements for a Potential Bidder to be a “Qualified Bidder” and a bid to be a “Qualified Bid” for purposes of competing at an Auction (as defined below).

PLEASE TAKE FURTHER NOTICE that the deadline to submit a Qualified Bid for (i) the Track A Assets is **October 16, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Track A Bid Deadline”) and (ii) the Track B Assets is **November 6, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Track B Bid Deadline” and, together with the Track A Bid Deadline, the “Bid Deadlines”). Pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualified Bids other than one from the Stalking Horse Bidders, if any, the Debtors are authorized to conduct an auction (the “Auction”) for the Track A Assets and the Track B Assets, respectively, in accordance with the Bidding Procedures Order. The Auctions, if held, will occur (i) for the Track A Assets, on **October 19, 2023 at 10:00 a.m. (prevailing Eastern Time)** and (ii), for the Track B Assets, on **November 9, 2023 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York or such other location as shall be timely communicated to all entities entitled to attend each respective Auction. Only (a) Qualified Bidders (including the Stalking Horse Bidder, if any) and their legal and financial advisors, and (b) actual creditors of the Debtors (provided that they give at least three (3) business days’ notice to the Debtors’ counsel of their intention to attend an Auction via email to Paul, Weiss, Rifkind, Wharton & Garrison LLP (Attn: Joshua A. Esses (jesses@paulweiss.com))

² Capitalized terms used but not defined have the meanings ascribed to them in the Bidding Procedures Order.

and Vida Robinson (virobinson@paulweiss.com)), shall be entitled to attend an Auction. If an Auction is cancelled, the Debtors shall file a notice of cancellation of the Auction.

PLEASE TAKE FURTHER NOTICE that objections, if any, to any Sales (the “Sale Objections”), shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estate or properties, the basis for the objection, and the specific grounds therefore, and shall be filed and served upon the following so that such objections are received by **October 2, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”) by: (a) counsel for the Debtors, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn. Paul Basta (pbasta@paulweiss.com) and Robert Britton (rbritton@paulweiss.com)), and (ii) Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 (Attn: Pauline Morgan (pmorgan@ycst.com) and Andrew Magaziner (amagaziner@ycst.com)); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Linda J. Casey (linda.casey@usdoj.gov)); and (c) the Notice Parties.

PLEASE TAKE FURTHER NOTICE that, for each Auction that is held, if any, the deadline to object only to (i) the conduct at the Auction or (ii) solely with respect to the Non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not the Stalking Horse Bidder) (such a limited objection, a “Post-Auction Objection”) is (a) **October 23, 2023 at 4:00 p.m. (prevailing Eastern Time)** with respect to the Track A Sale Hearing and (b) **November 13, 2023 at 4:00 p.m. (prevailing Eastern Time)** with respect to the Track B Sale Hearing (these deadlines, together, the “Post-Auction Objection Deadlines”). A Post-Auction Objection must be filed with this Court and served in the manner set forth below so to be actually received no later than the Post-Auction Objection Deadline.

PLEASE TAKE FURTHER NOTICE that failure of any entity to file an objection on or before the Sale Objection Deadline or applicable Post-Auction Objection Deadline shall be deemed to constitute consent to the sale of the Company Assets to the Successful Bidder and the other relief requested in the Motion, and be a bar to the assertion, at the applicable Sale Hearing or thereafter, of any objection to the Motion, the applicable Auction, the applicable Sale, or the Debtors’ consummation and performance of the terms of the applicable Definitive Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order provides that a hearing to approve the Sale of (a) the Track A Assets to the Successful Bidder therefor shall take place on **October 26, 2023 at [●] [a.m./p.m.] (prevailing Eastern Time)**, and (b) the Track B Assets to the Successful Bidder therefor shall take place on **November 16, 2023 at [●] [a.m./p.m.] (prevailing Eastern Time)** (these hearings, together, the “Sale Hearings”). The Sale Hearings will be held before the Honorable _____, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801.

For ease of reference, the following chart has been included to summarize key dates relevant to this notice:³

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ⁴	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Service and Publication of Sale Notice	1 business day after entry of Bidding Procedures Order or as soon as reasonably practicable thereafter	
Initial Indication of Interest (“IOI”) Deadline	Monday, September 18, 2023	
Debtors’ Deadline to File a Proposed Form of Sale Order	Monday, September 18, 2023	
Debtors’ Deadline to File and Serve Cure Notices	Thursday, September 21, 2023	
Sale Objection Deadline	Monday, October 2, 2023	
Cure/Assignment Objection Deadline	Thursday, October 12, 2023	
Qualified Bid Submission Deadline (can be moved at Debtors’ discretion)	Monday, October 16, 2023	Monday, November 6, 2023
Determination of Qualified Bids	Wednesday, October 18, 2023	Wednesday, November 8, 2023
Auction (if necessary)	Thursday, October 19, 2023 @ 10:00 a.m. (ET)	Thursday, November 9, 2023 @ 10:00 a.m. (ET)
Identification of Successful Bidder and Backup Bidder, if any	Friday, October 20, 2023 (or as soon as reasonably practicable thereafter)	Friday, November 10, 2023 (or as soon as reasonably practicable thereafter)
Post-Auction Objection Deadline	Monday, October 23, 2023	Monday, November 13, 2023

³ All dates, times, and deadlines are subject to change or modification in accordance with the Bidding Procedures Order.

⁴ Unless otherwise indicated, all deadlines (but not events) are 4:00 p.m. (prevailing Eastern Time).

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines⁴</u>	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Deadline to File Replies in Connection with Sale	Tuesday, October 24, 2023 @ 10:00 a.m. (ET)	Tuesday, November 14, 2023 @ 10:00 a.m. (ET)
Sale Hearing	Thursday, October 26, 2023	Thursday, November 16, 2023
Closing Date	As soon as reasonably practicable following entry of a Sale Order	As soon as reasonably practicable following entry of a Sale Order

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, and the Debtors urge parties in interest to review such documents in their entirety. Copies of the Motion, the Stalking Horse Agreements, if any, the Bidding Procedures, and the Bidding Procedures Order, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC ("KCC"), at www.kccllc.net/proterra for no charge, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained from the Debtors' claims and notice agent, KCC, at 888-251-3076 (USA or Canada) or 310-751-2617 (International).

**CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE A SALE
OBJECTION**

ANY PARTY OR ENTITY THAT FAILS TO TIMELY FILE AND SERVE AN OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE OR APPLICABLE POST-AUCTION OBJECTION DEADLINE, AS APPLICABLE, IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO SUCH SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE COMPANY ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS AFFECTED THEREUNDER.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING. ANY CREDITOR THAT RECEIVES NOTICE OF A SALE HEARING AND FAILS TO TIMELY FILE AN OBJECTION TO THE SALE ON OR BEFORE THE APPLICABLE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE DEEMED TO HAVE CONSENTED UNDER SECTION 363(F)(2) OF THE BANKRUPTCY CODE TO SUCH SALE FREE

AND CLEAR OF SUCH CREDITOR'S LIEN, CLAIMS, ENCUMBRANCES, OR INTERESTS, IF ANY.

Dated: [●], 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ DRAFT

Pauline K. Morgan (No. 3650)
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- and -

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit 3

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROTERRA INC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11120 (BLS)
)
) (Jointly Administered)
)
) **Re: Docket No. ____**

**NOTICE OF (I) POTENTIAL ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (II) PROPOSED CURE AMOUNTS**

You are receiving this notice (this “Notice”) because you may be a counterparty to a contract or lease with one or both of the Debtors (defined below) as set forth on Appendix A hereto. Please read this notice carefully as your rights may be affected by the transactions described herein.²

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On August 7, 2023, Proterra Inc and Proterra Operating Company, Inc. (collectively, the “Debtors” or the “Company”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On August 8, 2023, the Debtors filed the *Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors’ Entry Into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. ____] (the “Motion”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Proterra Inc (1379); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² This Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

3. On [●], 2023, the Court entered that certain *Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors' Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief* [Docket No. ____] (the “Bidding Procedures Order”),³ which approved, among other things, (a) procedures pursuant to which the Debtors are authorized to solicit and pursue (such procedures, the “Bidding Procedures”) one or more sales or dispositions of all or any portion of the Debtors’ assets (the “Company Assets”) under section 363 of the Bankruptcy Code (each, an “Asset Sale”) and any other type of strategic transaction involving the Debtors and/or the Company Assets, including, without limitation, a financing process for the potential raising of debt or equity financing through a chapter 11 plan of reorganization (any of the immediately foregoing, a “Recapitalization Transaction”, and, any of the foregoing, including an Asset Sale, a “Potential Transaction”), (b) the scheduling of a hearing to approve (i) the Sale of the Track A Assets and (ii) the Sale of the Track B Assets, each free and clear of any liens, claims, and encumbrances under section 363 of the Bankruptcy Code, and (c) procedures in connection with the assumption and assignment of any executory contracts or unexpired leases the Debtors seek to have assumed and assigned in connection with a Potential Transaction.

4. Pursuant to the Bidding Procedures Order: (i) the Track A Sale Hearing is scheduled to take place on **October 26, 2023 at [●] [a.m./p.m.] (prevailing Eastern Time)**; and (ii) the Track B Sale Hearing is scheduled to take place on **November 16, 2023 at [●] [a.m./p.m.] (prevailing Eastern Time)**. The Sale Hearings will be held before the Honorable _____ at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801.⁴

5. Pursuant to the Bidding Procedures Order, the Debtors may assume and assign to any Stalking Horse Bidder, Backup Bidder, or a Successful Bidder other than the Stalking Horse Bidder or the Backup Bidder, the executory contract(s) or unexpired lease(s) listed on **Appendix A** attached hereto (each, a “Contract”) to which you are a counterparty. The Debtors have conducted a review of their books and records and have determined that the cure amounts required to be paid pursuant to Bankruptcy Code section 365(b) in respect of such Contract(s) (the “Cure Amount”) are as set forth on **Appendix A** attached hereto. **If you disagree with the proposed Cure Amount, object to the proposed assumption and assignment of the Contract(s) to the Successful Bidder, or object to the Successful Bidder’s ability to provide adequate assurance of future performance with respect to any Contract(s), you must file an objection (a “Cure/Assignment Objection”), stating with specificity the nature of your objection, with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on October 12, 2023 (the “Cure/Assignment Objection Deadline”).** Cure/Assignment Objections

³ Capitalized terms used but not defined have the meanings ascribed to them in the Bidding Procedures Order.

⁴ Dates relating to the Sales, including the scheduled dates for the Auctions and Sale Hearings, may be changed in accordance with the Bidding Procedures Order.

must be filed and served *so as to be actually received by the Cure/Assignment Objection Deadline* by: (a) counsel for the Debtors, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn: Paul Basta (pbasta@paulweiss.com) and Robert Britton (rbritton@paulweiss.com)), and (ii) Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 (Attn: Pauline Morgan (pmorgan@ycst.com) and Andrew Magaziner (amagaziner@ycst.com)); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Linda J. Casey (linda.casey@usdoj.gov)); and (c) the Notice Parties.

6. The Debtors propose that if the counterparty to any Contract(s) fails to file an objection by the Cure/Assignment Objection Deadline to (a) the Cure Amount(s), (b) the proposed assumption and assignment of all or some of the Contracts to the Successful Bidder, or (c) adequate assurance of the Successful Bidder's ability to perform under the Contracts, then that counterparty shall be (i) deemed to have agreed and stipulated to the accuracy of the Cure Amount(s) set forth on this **Appendix A**, (ii) forever barred, estopped, and enjoined from asserting any additional cure amount under or in respect of the Contract(s), and (iii) forever barred from objecting to the assumption and assignment of the Contract(s) to the Successful Bidder, including on the basis that there was a failure to provide adequate assurance of future performance.

7. Promptly following the Debtors' selection of the Successful Bidder and the conclusion of each Auction (if any), the Debtors shall file notice of the Successful Bid and Successful Bidder with the Bankruptcy Court.

8. If any Auction is held, the deadline for non-Debtor counterparties to the Contracts to object solely with respect to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not the Stalking Horse Bidder, if any, or the Backup Bidder, if any) (such a limited objection, a "Post-Auction Objection") is (i), **with respect to the Contracts constituting Track A Assets that are proposed to be sold at the Track A Sale Hearing, 4:00 p.m. (prevailing Eastern Time) on October 23, 2023** and (ii), **with respect to the Contracts constituting Track B Assets that are proposed to be sold at the Track B Sale Hearing, 4:00 p.m. (prevailing Eastern Time) on November 13, 2023** (each, the "Post-Auction Objection Deadline"). A Post-Auction Objection must be filed with this Court and served in the manner set forth below so to be actually received no later than the Post-Auction Objection Deadline.

9. With respect to any Contract(s) assumed and assigned to the Successful Bidder (the "Assumed Contracts"), if a non-Debtor party to an Assumed Contract has objected solely to the proposed Cure Amount, the Debtors may, with the consent of, or at the direction of, the Successful Bidder, pay the undisputed portion of such Cure Amount and place the disputed amount in a segregated account pending further order of the Court or mutual agreement of the parties. So long as such disputed amounts are held in such segregated account, the Debtors may, without delay, assume and assign such Assumed Contract to the applicable assignee. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in such segregated account.

10. Following the payment of the Cure Amount(s) (subject to the preceding paragraph), the Debtors' filing and service of a notice regarding the closing of a Sale shall serve as notice that such Assumed Contracts have actually been assumed and assigned.

11. Notwithstanding anything herein, this notice shall not be deemed to be an assumption, assignment, adoption, rejection, termination, or concession to the executory nature of any Contract(s). Moreover, the Debtors explicitly reserve their rights, in their sole discretion, to reject or assume each Contract pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contract(s) or the validity, priority, or amount of any claims of a counterparty to any Contract against the Debtors that may arise under such Contract, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of an counterparty to a Contract against the Debtors that may arise under such Contract.

12. This notice is subject to the full terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors urge parties in interest to review such documents in their entirety. Copies of the Motion, the Stalking Horse Agreements, if any, the Bidding Procedures, and the Bidding Procedures Order, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC ("KCC"), at www.kccllc.net/proterra for no charge, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained from the Debtors' claims and notice agent, KCC, at 888-251-3076 (USA or Canada) or 310-751-2617 (International).

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Dated: [●], 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ DRAFT

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- and -

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*Proposed Counsel to the Debtors and
Debtors in Possession*

APPENDIX A TO CURE NOTICE

Counterparty Name	Contract/Lease	Cure Amount
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