

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

In re:

PROTERRA INC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 23-11120 (BLS)  
)  
) (Jointly Administered)  
)  
)  
)  
) Ref. Docket Nos. 737, 795, 888, 921, 1029,  
1039, 1076, 1128, 1143 & 1154

**NOTICE OF FILING AMENDED EXHIBITS A, D-1, D-2, D-3, and D-4 OF  
THE PLAN SUPPLEMENT FOR THE FIFTH AMENDED JOINT CHAPTER 11  
PLAN OF REORGANIZATION FOR PROTERRA INC AND ITS DEBTOR AFFILIATE**

**PLEASE TAKE NOTICE** that, on December 17, 2023, the debtors and debtors in possession (together, the “Debtors”) in the above-captioned chapter 11 cases filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 737] (as amended, supplemented, or modified, the “Plan”).<sup>2</sup> The Debtors filed amended versions of the Plan on January 2, 2024 [Docket No. 795], January 15, 2024 [Docket No. 888], January 22, 2024 [Docket No. 921], February 8, 2024 [Docket No. 1039], and March 1, 2024 [Docket No. 1154].

**PLEASE TAKE FURTHER NOTICE** that, on February 16, 2024, the Debtors filed the *Notice of Filing of Plan Supplement for the Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1076] (as may be amended, supplemented, or modified, the “Plan Supplement”). Attached as: (i) Exhibit A to the Plan Supplement was the

<sup>1</sup> 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: 504 Pennsylvania Avenue, PO Box 2205, Greer, SC 29652.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Plan.



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Distribution Trust Agreement (the “Distribution Trust Agreement”), (ii) Exhibit D-1 to the Plan Supplement was the Amended and Restated Bylaws of Proterra Inc (the “TopCo Bylaws”), (iii) Exhibit D-2 to the Plan Supplement was the Amended and Restated Certificate of Incorporation of Proterra Inc (the “TopCo CoI”), (iv) Exhibit D-3 to the Plan Supplement was the Amended and Restated Bylaws of Proterra Operating Company, Inc. (the “OpCo Bylaws”), and (v) Exhibit D-4 to the Plan Supplement was the Amended and Restated Certificate of Incorporation of Proterra Operating Company, Inc. (the “OpCo CoI”).<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that, on February 27, 2024, the Debtors filed the *Notice of Filing Amended Exhibits B, C, and E of the Plan Supplement for the Fourth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1128].

**PLEASE TAKE FURTHER NOTICE** that, on March 1, 2024, the Debtors filed the *Notice of Filing Amended Exhibits C and D-5 of the Plan Supplement for the Fourth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1143].

**PLEASE TAKE FURTHER NOTICE** that the Debtors have amended the: (i) Distribution Trust Agreement (the “Amended Distribution Trust Agreement”), attached hereto as **Exhibit A-1**, (ii) TopCo Bylaws (the “Amended TopCo Bylaws”), attached hereto as **Exhibit B-1**, (iii) TopCo CoI (the “Amended TopCo CoI”), attached hereto as **Exhibit C-1**, (iv) OpCo Bylaws (the “Amended OpCo Bylaws”), attached hereto as **Exhibit D-1**, and (v) OpCo CoI (the “Amended OpCo CoI”), attached hereto as **Exhibit E-1**. A blackline of the: (i) Amended

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<sup>3</sup> On the Effective Date, the New Organization Documents shall be the form and substance consistent with the form of Amended TopCo Bylaws, Amended TopCo CoI, Amended OpCo Bylaws, and Amended OpCo CoI attached hereto, subject to any technical modifications acceptable to the Debtors and Plan Sponsor.

Distribution Trust Agreement marked against the previously filed version of the Distribution Trust Agreement is attached hereto as **Exhibit A-2**, (ii) Amended TopCo Bylaws marked against the previously filed version of the TopCo Bylaws is attached hereto as **Exhibit B-2**, (iii) Amended TopCo CoI marked against the previously filed version of the TopCo CoI is attached hereto as **Exhibit C-2**, (iv) Amended OpCo Bylaws marked against the previously filed version of the OpCo Bylaws is attached hereto as **Exhibit D-2**, and (v) Amended OpCo CoI marked against the previously filed version of the OpCo CoI is attached hereto as **Exhibit E-2**.

*[Remainder of Page Intentionally Blank]*

Dated: March 13, 2024  
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Shella Borovinskaya

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*Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A-1**

**Amended Distribution Trust Agreement**

**(Exhibit A to Plan Supplement)**

**DISTRIBUTION TRUST AGREEMENT**

**Dated as of March 13, 2024**

*Pursuant to the Fifth Amended Joint Chapter 11 Plan of  
Reorganization for Proterra Inc  
and its Debtor Affiliate*

## **DISTRIBUTION TRUST AGREEMENT**

This Distribution Trust Agreement (this “**Trust Agreement**”), dated the date set forth on the signature page hereof and effective as of the Effective Date (defined below), is entered into pursuant to the *Fifth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1154] (as may be further amended or modified, the “**Plan**”),<sup>1</sup> in Case No. 23-11120 (BLS) in the United States Bankruptcy Court for the District of Delaware (“**Bankruptcy Court**”) by the Trustee identified on the signature pages hereof (the “**Trustee**”).

### **RECITALS**

**WHEREAS**, the Plan contemplates the creation of the Distribution Trust (the “**Distribution Trust**”);

**WHEREAS**, the Confirmation Order [Docket No. 1180] has been entered by the Bankruptcy Court on March 6, 2024;

**WHEREAS**, pursuant to the Plan, as of the effective date of the Plan (the “**Effective Date**”) the Distribution Trust is established to provide for distributions of the Distribution Trust Assets to the Distribution Trust Beneficiaries (as defined below) in accordance with the Plan, the Confirmation Order, and this Trust Agreement;

**WHEREAS**, the Trustee shall administer the Distribution Trust in accordance with the terms of the Plan, the Confirmation Order, and this Trust Agreement;

**WHEREAS**, the Trustee shall conduct the Wind Down in a manner consistent with the Debtors’ obligations under the Purchase Agreements and that certain Plan Support Agreement, as

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the Plan, and such definitions are incorporated herein by reference. All capitalized terms not defined herein or in the Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the meanings ascribed to them by the Bankruptcy Code and Bankruptcy Rules, as applicable, and such definitions are also incorporated herein by reference.

applicable, including, for the avoidance of doubt, the provision of any services in connection with the transition of the Debtors' operations to any Purchaser (the "**Purchaser Transition Services**") in accordance with the applicable transition services agreement (each, a "**TSA**," and collectively, the "**TSAs**"); and

**WHEREAS**, pursuant to the Plan, the Distribution Trust is intended to qualify as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Treasury Regulations or under applicable Internal Revenue Service ("**IRS**") guidelines, and a "grantor trust" for United States federal income tax purposes, pursuant to Sections 671 through 679 of the Internal Revenue Code (the "**IRC**"), with the Distribution Trust Beneficiaries treated as the grantors of the Distribution Trust, except with respect to any Disputed Ownership Fund pursuant to Section 5.3(c) hereof.

**NOW, THEREFORE**, it is hereby agreed as follows:

## **ARTICLE I**

### **AGREEMENT OF TRUST**

**1.1 Creation and Name.** There is hereby created a trust known as the "PTRA Distribution Trust." The Trustee of the Distribution Trust may transact the business and affairs of the Distribution Trust in the name of the Distribution Trust, and references herein to the Distribution Trust shall include for all purposes the Trustee acting on behalf of the Distribution Trust and for the benefit of the Holders of Allowed Administrative Expense Claims (other than Professional Compensation Claims),<sup>2</sup> Allowed Priority Tax Claims, Allowed Other Secured

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<sup>2</sup> For the avoidance of doubt, Holders of Professional Compensation Claims shall be First Priority Distribution Trust Beneficiaries to the extent that funds held in the Professional Compensation Escrow Account are insufficient to satisfy the amount of accrued Professional Compensation Claims, entitling such Holders to Allowed Administrative Expense Claims for any such deficiencies in accordance with Article II.A.2 of the Plan.



Claims, and Allowed Other Priority Claims, in each case, to the extent such Claims were Disputed as of the Effective Date and not otherwise Reinstated or otherwise assumed by the Reorganized Debtors, if any, until such Claims are paid in full (collectively, the “**First Priority Distribution Trust Beneficiaries**”) and to Holders of Allowed Class 5 General Unsecured Claims (the “**Second Priority Distribution Trust Beneficiaries**,” and together with the First Priority Distribution Trust Beneficiaries, the “**Distribution Trust Beneficiaries**”). It is the intention of the Trustee that the Distribution Trust qualify as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations and that this Trust Agreement constitute the governing instrument of the Distribution Trust, except with respect to any Disputed Ownership Fund.

**1.2      Appointment of Trustee.** The Trustee is hereby appointed as the Trustee of the Distribution Trust on the Effective Date and agrees to accept and liquidate the Distribution Trust Assets in trust on behalf of, and for the benefit of, the Distribution Trust Beneficiaries subject to the terms of the Plan, the Confirmation Order, and this Trust Agreement.

**1.3      Purposes.** The purposes of the Distribution Trust are to, in each case, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purposes of the Distribution Trust, in accordance with applicable Treasury Regulations:

- (a)      receive the Distribution Trust Assets pursuant to the terms of the Plan and the Confirmation Order;
- (b)      with the primary purpose of liquidating and distributing (as applicable) the assets transferred to it, hold, manage, protect, and, subject to Section 3.2 hereof, invest the Distribution Trust Assets, which includes any income or gain earned thereon and proceeds derived therefrom, and monetize any non-liquid Distribution Trust Assets, in accordance with the terms of

the Plan, the Confirmation Order and this Trust Agreement for the benefit of the Distribution Trust Beneficiaries;

(c) administer, reconcile, dispute, object to, compromise, or otherwise resolve all Disputed Claims to determine the ultimate amount and number of Allowed Claims;

(d) make distributions to Distribution Trust Beneficiaries in accordance with the Plan, Confirmation Order, and this Trust Agreement;

(e) endeavor to make timely distributions and not unduly prolong the duration of the Distribution Trust;

(f) administer the Wind Down (including, for the avoidance of doubt, provision of the Purchaser Transition Services);

(g) abandon, liquidate, and reduce to Cash any non-Cash Distribution Trust Assets;

(h) maximize recoveries for the benefit of the Distribution Trust Beneficiaries;

(i) qualify at all times as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund;

(j) engage in any lawful activity that is appropriate, and in furtherance of, the purposes of the Distribution Trust to the extent consistent with the Plan, the Confirmation Order this Trust Agreement, and the TSAs; and

(k) be deemed substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Distribution Trust to file motions or substitutions of parties or counsel in each such matter; *provided* that any

actions taken pursuant to the foregoing authority shall be consistent in all respects with the Plan and any order of the Bankruptcy Court entered prior to the Effective Date.

**1.4      Transfer of Assets.** Pursuant to, and in accordance with Article IV.D of the Plan, the Distribution Trust has received, on the Effective Date, the Distribution Trust Assets to fund the Distribution Trust. The Distribution Trust Assets and any other assets to be transferred to the Distribution Trust under the Plan will be transferred to the Distribution Trust free and clear of any liens, interests, encumbrances, or other claims by the Debtors, the Reorganized Debtors, the Wind Down Debtors, any creditor, or other entity including, but not limited to, the purchasers of any of the Debtors' assets. No other entity shall have any interest, legal, beneficial or otherwise, in the Distribution Trust Assets upon the assignment and transfer of such assets to the Distribution Trust except as set forth in this Trust Agreement.

**1.5      Acceptance of Assets and Assumption of Liabilities.**

(a) In furtherance of the purposes of the Distribution Trust, the Distribution Trust hereby expressly accepts the transfer to the Distribution Trust of the Distribution Trust Assets in the time and manner as, and subject to the terms, contemplated in the Plan and Confirmation Order.

(b) In furtherance of the purposes of the Distribution Trust, except as otherwise provided in this Trust Agreement, the Plan, or Confirmation Order, the Distribution Trust shall have and retain any and all rights and defenses the Debtors had with respect to any Disputed Claims immediately before the Effective Date to the extent necessary to administer such Claims in accordance with this Trust Agreement, the Plan, and the Confirmation Order.

(c) Notwithstanding anything to the contrary herein, no provision herein shall be construed or implemented in a manner that would cause the Distribution Trust to fail to qualify

as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund.

(d) In this Trust Agreement, the words “must,” “will,” and “shall” are intended to have the same mandatory force and effect, while the word “may” is intended to be permissive rather than mandatory.

**1.6 Jurisdiction.** The Bankruptcy Court shall have continuing jurisdiction over the Distribution Trust, provided, however, that the courts of the State of Delaware, including any federal court located therein, shall also have jurisdiction over the Distribution Trust.

## **ARTICLE II**

### **POWERS, TRUST ADMINISTRATION, AND REPORTING**

#### **2.1 Powers.**

(a) The Trustee shall, at all times, administer the Distribution Trust in accordance with the purposes set forth in Section 1.3 above, the Plan, and the Confirmation Order. Subject to the limitations set forth in this Trust Agreement, the Plan, and the Confirmation Order, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Distribution Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law, or as otherwise specified herein, or in the Plan or the Confirmation Order, the Trustee need not obtain the order or approval of any court, including the Bankruptcy Court, in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a) above, and except as limited by the terms of this Trust Agreement, the Plan, or the Confirmation Order, the Trustee shall have the power to:

(i) receive, hold, preserve, and liquidate the Distribution Trust Assets and exercise all rights with respect thereto;

(ii) invest the monies held from time to time by the Distribution Trust in accordance with the Investment Guidelines pursuant to Section 3.2 below;

(iii) act on behalf of the Distribution Trust, including having the right to take all actions and execute all agreements, instruments and other documents, and exercise all rights and privileges previously held by the Debtors necessary or convenient to implement the provisions of the Plan, the Confirmation Order, and this Trust Agreement;

(iv) administer, oversee, and take any and all actions necessary to effect the Wind Down (including, for the avoidance of doubt, the performance and receipt of any Purchaser Transition Services) in consultation with the Second Lien Agent as soon as reasonably practicable following the Effective Date, and, in connection therewith, the Debtors shall use commercially reasonable efforts to provide to the Distribution Trust copies of all books, records, and files of the Debtors in the Debtors' possession and control as of the Plan Effective Date, and the Distribution Trust may provide for the retention and storage of such copies until such time as the Trustee determines that retention of the same is no longer necessary or required; *provided* that, for the avoidance of doubt, the Reorganized Debtors shall be entitled to retain original copies of all books, records, and files of the Debtors as of the Effective Date;

(v) exercise any rights of the Distribution Trust under any applicable TSA, including with respect to requesting information from a Purchaser;

(vi) with respect to any Distribution Trust Assets, exercise in a manner not inconsistent with the Plan, the Confirmation Order, and this Trust Agreement, all power and authority that may be, or could have been, exercised in compliance with Revenue Procedure 94-45, commence or continue all proceedings (including any Retained Causes of Action transferred to the Distribution Trust) that may be or could have been, commenced or continued and take all actions that may be or could have been taken by any member, officer, director or shareholder of each Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including, without limitation, the dissolution of each Wind Down Debtor (but excluding, for the avoidance of doubt, any Cause of Action that (A) has been transferred to a Purchaser or released, waived, barred or enjoined in connection with a Sale, (B) is released, waived, barred or enjoined pursuant to Article IX of the Plan, or (C) is retained by or transferred to the Reorganized Debtors in accordance with the Schedule of Retained Causes of Action);

(vii) manage, monitor, and enforce all of the Wind Down Debtors' and the Estates' rights, and interests under the Plan, the Confirmation Order, and this Trust Agreement, and other agreements of the Debtors, including the TSAs, and any other orders of the Bankruptcy Court;

(viii) establish, maintain, and adjust such operating, reserve, and trust account(s) as are necessary and appropriate to carry out the terms of this Trust Agreement, the Plan, and the Confirmation Order, including administering the Distribution Trust Expense Reserve, and to authorize and make disbursements from the Distribution Trust Expense Reserve or the Distribution Trust Assets, including disbursements necessary or appropriate in connection with the Wind Down, in each case, in accordance with the Plan and this Trust Agreement;

(ix) administer or take action in connection with the administration of the Self-Insured Reserve Account for the benefit of Holders of Health Insurance Claims, which Holders shall, for the avoidance of doubt, be beneficiaries of the Distribution Trust until paid in full;

(x) authorize and make, through the Disbursing Agent, to the extent one is retained, distributions to Holders of Allowed Claims in accordance with the Plan and the Confirmation Order, including distributions from the Professional Compensation Escrow Account on account of Professional Compensation Claims in accordance with the Plan and the Confirmation Order, except for distributions made by the Debtors in Cash on the Effective Date pursuant to the terms of the Plan and the Confirmation Order;

(xi) authorize and make, through the Disbursing Agent, to the extent one is retained, distributions to the Distribution Trust Beneficiaries provided for or contemplated under the Plan or this Trust Agreement;

(xii) in the Trustee's sole discretion, reconcile, object to, compromise, and settle any Disputed Claims, and sue and participate, as a party or otherwise, in any judicial administrative, arbitral or other proceeding, as required to reconcile, administer, or defend against the Disputed Claims, without supervision or approval of the Bankruptcy Court, free of any restriction of the Bankruptcy Code, the Bankruptcy Rules, and the guidelines and requirements of the U.S. Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order, or this Trust Agreement;

(xiii) make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Distribution Trust and the Trustee, including, but not limited to, those professionals previously

retained by the Committee, and to pay the fees and charges incurred by the Trustee on the Distribution Trust's behalf on or after the Effective Date for professionals (including those retained by the Trustee), disbursements, expenses or related support services relating to the Distribution Trust, in each case from the Distribution Trust Expense Reserve;

(xiv) file, if necessary, any and all tax and information returns required with respect to the Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) or otherwise, make tax elections by and on behalf of the Distribution Trust, pay taxes, if any, payable by the Distribution Trust, and represent the interest and account of the Distribution Trust before any taxing authority in all matters including, without limitation, any dispute, action, suit, proceeding, or audit;

(xv) complete and file all final or otherwise required federal, state, and local tax returns for the Wind Down Debtors, if any;

(xvi) take all other actions not inconsistent with the provisions of the Plan, the Confirmation Order, and this Trust Agreement that the Trustee deems reasonably necessary or desirable with respect to administering the Plan and Distribution Trust, including, but not limited to, the Wind Down, the Distribution Trust Expense Reserve, the Professional Compensation Escrow Account, and the Self-Insured Reserve Account;

(xvii) implement and/or enforce all provisions of the Plan and Confirmation Order, including entering into any agreement or executing any document required by, or consistent with, the Plan, the Confirmation Order, or this Trust Agreement;

(xviii) abandon in the reasonable business judgment of the Trustee and in any commercially reasonable manner, including through donation to a charitable organization



of its choice, any Distribution Trust Asset; *provided, however*, that such charitable organization shall not have any connection to the Trustee or to the Debtors;

(xix) prosecute, dismiss, and/or settle any Retained Causes of Action assigned to the Distribution Trust, with or without approval of the Bankruptcy Court, and exercise, participate in, or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitrate or other nonjudicial proceeding, and pursue to settlement or judgment of such Retained Causes of Action;

(xx) purchase or create and carry all insurance policies and pay all insurance premiums and costs the Trustee deems necessary or advisable;

(xxi) collect and liquidate and/or distribute all Distribution Trust Assets pursuant to the Plan, the Confirmation Order and this Trust Agreement;

(xxii) hold any legal title to any and all of the Distribution Trust Assets;

(xxiii) if any of the Distribution Trust Assets are situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee: (A) nominate and appoint a Person duly qualified to act as trustee in each such state or jurisdiction and require from each such trustee such security as may be designated by the Trustee in his or her sole discretion; (B) confer upon such trustee all the rights, powers, privileges and duties of the Trustee hereunder, subject to the conditions and limitations of this Trust Agreement, the Plan, and the Confirmation Order, except as modified or limited by the Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws or the state or jurisdiction in which the trustee is acting shall prevail to the extent necessary); (C) require such trustee to be answerable to the Trustee for all monies, assets and other property that may be

received in connection with the administration of such property; and (D) remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(xxiv) obtain and receive the proceeds or other benefits of any and all Insurance Contracts of the Debtors providing coverage with respect to Retained Causes of Action assigned to the Distribution Trust;

(xxv) undertake all administrative functions of the Chapter 11 Cases, including the payment of Statutory Fees and the ultimate closing of the Chapter 11 Cases; and

(xxvi) exercise such other powers as may be vested in or assumed by the Trustee pursuant to the Plan, this Trust Agreement, the Confirmation Order, other orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan and the Confirmation Order;

(xxvii) enter into such other arrangements with third parties as the Trustee deems useful in carrying out the purposes of the Distribution Trust, provided such arrangements do not conflict with any other provision of this Trust Agreement, the Plan, or the Confirmation Order; and

(xxviii) in accordance with Section 4.4 below, defend, indemnify, and hold harmless (and purchase insurance indemnifying) the Trust Indemnified Parties (as defined in Section 4.4 below), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless, and/or insure its directors, trustees, officers, employees, consultants, advisors, agents, representatives, and any

other parties. No party shall be indemnified in any way for any liability, expense, claim, damage, or loss for which he or she is liable under Section 4.4 below.

(d) The Distribution Trust shall not have the power to guarantee any debt of other persons.

## **2.2 General Administration.**

(a) The Trustee shall act in accordance with the Plan, the Confirmation Order, and this Trust Agreement. In the event of any inconsistency between the Plan (without reference to this Trust Agreement) and this Trust Agreement, the terms of this Trust Agreement shall control (unless stated otherwise in this Trust Agreement or in the Confirmation Order).

(b) The Trustee shall (i) timely file such tax returns and pay any taxes imposed on the Distribution Trust in accordance with Section 5.3 hereof, (ii) comply with all applicable reporting and withholding obligations in accordance with Section 5.4 hereof, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Distribution Trust as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund, and (iv) take no action that could cause the Distribution Trust to fail to qualify as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund.

(c) Other than the obligations of the Trustee specifically set forth in this Trust Agreement, the Plan, or the Confirmation Order, the Trustee shall have no obligations of any kind or nature with respect to his position as such.

## **2.3 Reporting.**

(a) The Trustee shall timely prepare, file and distribute such statements, reports and submissions to the extent required by applicable law.

(b) The Trustee shall file with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee, which reports shall include a separate schedule of disbursements made by the Distribution Trust on behalf of the Debtors during the applicable period, attested to by the Trustee, an authorized representative of the Trustee, or the Reorganized Debtor, as applicable.

(c) The Trustee, or its appointed Disbursing Agent, and the Reorganized Debtors, as applicable, shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee with respect to each Debtor's Chapter 11 Case until such Chapter 11 Case has been closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code; *provided that*, such payments shall be made by the Distribution Trust (whether from the Distribution Trust Expense Reserve or the Distribution Trust Assets) or the Reorganized Debtors; *provided, further*, that to the greatest extent possible, such payments shall be made by the Distribution Trust (whether from the Distribution Trust Expense Reserve or the Distribution Trust Assets) rather than the Reorganized Debtors. Unless otherwise ordered by the Bankruptcy Court, the Trustee shall maintain at all times, in the Distribution Trust Expense Reserve for the payment of Statutory Fees, a reserve of Cash in an amount no less than the greater of (i) estimated Statutory Fees to be paid prior to the closing of each Chapter 11 Case, and (ii) \$500,000 per Chapter 11 Case that has not been closed.

(d) Pursuant to Section 5.3(a) hereof, within a reasonable time following the end of the taxable year, the Trust shall send to each Distribution Trust Beneficiary a separate statement setting forth such Distribution Trust Beneficiary's items of income, gain, loss, deduction or credit and will instruct each such Distribution Trust Beneficiary to report such items on his/her applicable income tax return.

### ARTICLE III

#### ACCOUNTS, INVESTMENTS, AND PAYMENTS

##### **3.1 Accounts.**

(a) The Trustee shall maintain one or more accounts (the “**Trust Accounts**”) on behalf of the Distribution Trust with one or more financial depository institutions (each a “**Financial Institution**”).

(b) Candidates for the positions of Financial Institution shall fully disclose to the Trustee any interest in, or relationship with, the Reorganized Debtors or their Affiliates, if applicable. Any such interest or relationship shall not be an automatic disqualification for the position, but the Trustee shall take any such interest or relationship into account in selecting a Financial Institution.

(c) The Trustee may replace any retained Financial Institution with a successor Financial Institution at any time, and such successor shall be subject to the considerations set forth in Section 3.1(b) above.

(d) The Trustee may, from time to time, create such accounts and reasonable reserves within the Trust Accounts as authorized in this Section 3.1 and as he or she may deem necessary, prudent or useful in order to provide for distributions to the Distribution Trust Beneficiaries and may, with respect to any such account or reserve, restrict the use of money therein for a specified purpose (the “**Trust Subaccounts**”). Any such Trust Subaccounts established by the Trustee shall be held as Distribution Trust Assets, and except as specifically designated as such in accordance with the provisions of Section 5.3(c) below, are not intended to be subject to separate entity tax treatment as a “disputed claims reserve” or a “disputed ownership fund” within the meaning of the IRC or applicable Treasury Regulations.

### **3.2 Investment Guidelines.**

(a) The Trustee may invest the Trust Assets, provided, however, that the scope of any investment shall be limited to include only those investments permitted to be made by a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations or under applicable IRS guidelines, whether set forth in IRS rulings, revenue procedures (including Section 3.09 of Revenue Procedure 94-45), other IRS pronouncements, or otherwise.

(b) In the event the Distribution Trust holds any non-liquid assets, the Trustee shall own, protect, oversee, and monetize such non-liquid assets in accordance with the Plan, the Confirmation Order, and this Trust Agreement. This Section 3.2(b) is intended to modify the application to the Distribution Trust of the “prudent person” rule, “prudent investor” rule and any other rule of law that would require the Trustee to diversify the Distribution Trust Assets.

(c) Cash proceeds received by the Distribution Trust in connection with its monetization of the non-liquid Distribution Trust Assets shall be invested in accordance with this Section 3.2 until needed for the purposes of the Distribution Trust as set forth in Section 1.3 above.

**3.3 Payment of Operating Expenses.** All operating expenses of the Distribution Trust, including the fees and expenses of the Trustee and other professionals retained on behalf of the Distribution Trust, shall be paid from the Distribution Trust Expense Reserve, as provided in the Plan, the Confirmation Order, and this Trust Agreement. None of the Trustee, the Distribution Trust Beneficiaries, nor any of their officers, agents, advisors, professionals or employees shall be personally liable for the payment of any operating expense or other liability of the Distribution Trust. Except as expressly set forth in the Plan, none of the Debtors, Wind Down Debtors, or Reorganized Debtors, as applicable, nor any of their officers, agents, advisors, professionals or employees shall be liable for the payment of any operating expense or other liability of the

Distribution Trust or the Trustee. To the extent that the Trustee determines that the Distribution Trust Expense Reserve is likely to incur a cash shortfall prior to the termination and winding up of the Distribution Trust, the Trustee may, in his or her business judgment, replenish the Distribution Trust Expense Reserve from the Distribution Trust Assets. To the extent any Cash is remaining in the Distribution Trust Expense Reserve following irrevocable payment in full of all costs, fees and expenses described in this Article IV.G.1, the Trustee shall transfer such Cash to the Distribution Trust, with such excess amounts constituting Distribution Trust Assets to be distributed pursuant to the terms of the Plan, the Confirmation Order, and this Trust Agreement.

**3.4 Distributions to Distribution Trust Beneficiaries.**

(a) The Trustee will make distributions to Distribution Trust Beneficiaries in a fair, consistent and equitable manner in accordance with this Trust Agreement, the Plan and the Confirmation Order.

(b) With respect to Distributions for which the Trustee is the Disbursing Agent in accordance with Article VI.B of the Plan, except where the Plan requires the making of a Distribution on account of a particular Allowed Claim within a particular time, the Trustee shall have the authority to select Distribution Dates that, in the judgment of the Trustee, provide Holders of Allowed Claims with payments as quickly as reasonably practicable while limiting the costs incurred in the distribution process.

(c) Subject to Article VI of the Plan, the Trustee shall distribute the Distribution Trust Assets or their proceeds (as applicable) to the Distribution Trust Beneficiaries on each

Distribution Date in accordance with the terms and conditions of the Trust Agreement, the Plan, and the Confirmation Order, and in accordance with the following distribution waterfall:

(i) *First*, to the Holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims, in each case, to the extent such Claims were Disputed as of the Effective Date, until such Allowed Claims are paid in full; and

(ii) *Second*, subject to retaining Cash as set forth in Article VI.C.2 of the Plan, to the Second Priority Distribution Trust Beneficiaries.

(d) Subject to retaining Cash as set forth in Article VI.C.2 of the Plan, the Trustee shall distribute to the Holders of Allowed Claims on account of their Distribution Trust Interests on a semi-annual basis, or with such other frequency as the Trustee determines in the exercise of its business judgment, Cash representing its net Cash income plus all net Cash proceeds from the sale of its assets (including any Cash received from the Debtors), and treating any permissible investment as Cash for purposes of this Section 3.4, less such amounts that may be reasonably necessary to:

(i) meet contingent liabilities and to maintain the value of the Distribution Trust Assets during liquidation;

(ii) pay reasonably incurred or anticipated expenses (including, without limitation, any taxes imposed on, or payable by, the Wind Down Debtors or the Distribution Trust or in respect of the Distribution Trust Assets); or

(iii) satisfy other liabilities incurred or anticipated by the Distribution Trust in accordance with the Plan, the Confirmation Order, or this Trust Agreement; *provided, however*, that the Trustee shall not be required to make a Distribution pursuant to this Section 3.4



if the Trustee determines that the expense associated with making the Distribution would likely utilize a substantial portion of the amount to be distributed, thus making the Distribution impracticable.

(e) The Trustee may be the Disbursing Agent (provided that the Trustee may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent, and any references herein to the Trustee as the Disbursing Agent shall be deemed to apply to any such agents of the Trustee, as applicable) and shall cause all distributions to be made to Holders of Claims after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

(f) The Disbursing Agent shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, the Confirmation Order, and this Trust Agreement; (ii) make all distributions contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, the Confirmation Order, and this Trust Agreement, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof and of the Plan.

(g) On and after the Effective Date, no Distributions to the Second Priority Distribution Trust Beneficiaries shall be made (i) prior to the Administrative Claims Bar Date, or (ii) after the Administrative Claims Bar Date which would, after giving effect to such Distributions, result in the Distribution Trust Assets being less than the Disputed Claims Reserve Amount.

(h) The Disbursing Agent shall remit to each First Priority Distribution Trust Beneficiary, pursuant to Article VI.C.3 of the Plan, on the first Distribution Date to occur that is at least thirty (30) days (or such fewer days as may be established by the Trustee in its sole discretion) after the date on which such First Priority Distribution Trust Beneficiary's Claim is Allowed, any Distributions to which such First Priority Distribution Trust Beneficiary would have been entitled under this Plan on account of its Claim had such Claim been Allowed as of the Effective Date.

(i) Subject to Article VI.C.2 of the Plan, on each Distribution Date, the Disbursing Agent shall make Distributions of the Trust Assets to the Second Priority Distribution Trust Beneficiaries.

(j) With respect to Holders of Disputed Class 5 General Unsecured Claims, upon any such Disputed Class 5 General Unsecured Claim becoming an Allowed Claim, the Holder of such Allowed Claim shall be deemed to be a Second Priority Distribution Trust Beneficiary. On the first Distribution Date that is at least thirty (30) days (or such fewer days as may be established by the Trustee in its sole discretion) after the date on which a Holder of a Disputed Class 5 General Unsecured Claim becomes a Second Priority Distribution Trust Beneficiary, the Disbursing Agent shall remit to the Holder of such Allowed Claim any Distributions such Holder would have been entitled to under the Plan, the Confirmation Order, and this Trust Agreement had such Holder been a Second Priority Distribution Trust Beneficiary as of the Effective Date.

(k) The Distribution Trust may withhold or deduct from amounts distributable to any Person or Entity any and all amounts, determined in the Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental

requirement (including, without limitation, tax withholding in accordance with Section 5.4 below).

(l) With respect to any Distribution Trust Assets which are undistributable in accordance with this Section 3.4 as of the termination of the Distribution Trust: (i) such amounts shall revert to the Distribution Trust (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary); (ii) the applicable Distribution Trust Beneficiary's claim with respect to such undistributable amounts shall be released, settled, compromised and forever barred; and (iii) the undistributable amounts shall be deemed to be Distribution Trust Assets to be distributed pursuant to the terms of the Plan, this Trust Agreement, and the Confirmation Order.

(m) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution. Notwithstanding anything to the contrary contained in the Plan, neither the Debtors, prior to the Effective Date, nor the Trustee thereafter, shall be required to distribute, and neither shall distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50, and only when such distribution is the final distribution, shall be forever barred from asserting such Claim against the Debtors, the Estates, the property of the Debtors or the Distribution Trust, or the Trustee.

(n) In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has been advised of the then-current address of such Holder, at which time such distribution shall be made

to such Holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date any such undeliverable distribution was attempted to be made without further order of the Bankruptcy Court. For the avoidance of doubt, nothing contained herein shall require the Disbursing Agent to attempt to locate a new address for any such Holder. After such date, all unclaimed property or interests in property shall revert to the Distribution Trust as Distribution Trust Assets (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred without further order of the Bankruptcy Court.

(o) Checks issued by the Disbursing Agent on account of Allowed Claims shall be null and void if not negotiated within ninety (90) calendar days after the date of issuance thereof. Requests for reissuance of any voided check shall be made directly to the Trustee by the Distribution Trust Beneficiary to whom such check was originally issued within ninety (90) calendar days after the date of issuance. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the issuance of such check shall have its Claim for such un-negotiated check discharged and shall be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Estates without further order of the Bankruptcy Court. In such cases, any Cash held for payment on account of such Claims shall be Distribution Trust Assets, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

(p) Cash payments to foreign Distribution Trust Beneficiaries may be made, at the option of the Trustee, in such funds and by such means as are necessary or customary in the foreign jurisdiction of such foreign holder.

(q) The Trustee shall have the sole discretion to select Distribution Dates in the most efficient and cost-effective manner possible; *provided, however*, that the Trustee's discretion may not be exercised in a manner inconsistent with any express requirements of the Plan, the Confirmation Order, and this Trust Agreement; *provided, further*, that except as otherwise provided in a Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal (National Edition), on the Effective Date.

(r) After the Final Distribution has been made in accordance with the Plan, the Confirmation Order and this Trust Agreement, and adequate provision has been made for all final obligations of the Distribution Trust, the Trustee shall have the authority to direct the remaining Distribution Trust Assets to a tax-exempt organization as selected by the Trustee in his or her discretion.

## **ARTICLE IV**

### **TRUSTEE**

**4.1     Number.**       There shall be one (1) Trustee who shall be the person named on the signature pages hereof.

**4.2     Terms of Service.**

(a)     The Trustee shall serve from the Effective Date until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) below, (iii) his or her removal

pursuant to Section 4.2(c) below, or (iv) the termination of the Distribution Trust pursuant to Section 6.2 below.

(b) The Trustee may resign at any time upon written notice with such notice being filed with the Bankruptcy Court. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The Trustee may be removed by the Bankruptcy Court in the event the Trustee becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence or for other good cause, provided the Trustee has received reasonable notice and an opportunity to be heard prior to such removal. Other good cause shall mean (i) fraud, self-dealing, intentional misrepresentation, willful misconduct, indictment for or conviction of a felony, in each case whether or not connected to the Distribution Trust, or (ii) a consistent pattern of neglect and failure to perform or participate in performing the duties of Trustee hereunder.

(d) In the event of any vacancy in the office of the Trustee, including the death, resignation or removal of any Trustee, such vacancy shall be filled by the Bankruptcy Court.

(e) Immediately upon the appointment of any successor Trustee pursuant to Section 4.2(d) above, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the successor Trustee without any further action. No successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee. No predecessor Trustee shall be liable personally for any act or omission of his or her successor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(f) Each successor Trustee shall serve until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) above, (iii) his or her removal pursuant to Section 4.2(c) above, and (iv) the termination of the Distribution Trust pursuant to Section 6.2 below.

#### **4.3 Compensation and Expenses of the Trustee.**

(a) The Trustee and his or her agents shall be entitled to receive reasonable compensation for services rendered on behalf of the Distribution Trust, which shall be billed at such individual's rates as further described on Exhibit A, *provided, however*, that compensation of any successor Trustee may be different from the terms provided herein and in any event shall be approved by the Bankruptcy Court prior to the retention of any subsequent Trustee. Subject to the Plan, Confirmation Order, and this Trust Agreement, the Trustee shall be employed and compensated on a monthly basis at \$25,000 for the first 6 months of the Distribution Trust's existence, and then \$18,000 per month going forward.

(b) The Trustee shall be compensated pursuant to the terms of this Trust Agreement. Any professionals retained by the Trustee shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred, subject to approval by the Trustee. The payment of fees and expenses of the Trustee and its professionals shall be made in the ordinary course of business from the Distribution Trust Expense Reserve and shall not be subject to Bankruptcy Court approval. As of the Effective Date, the Distribution Trust Expense Reserve shall be \$10,000,000.

(c) The Distribution Trust will reimburse the Trustee for fees and expenses incurred prior to the Effective Date in connection with reviewing this Trust Agreement and effectuating a timely, orderly, and efficient transition of duties and obligations to the Trustee as of

the Effective Date (such amount not to exceed \$100,000), which shall be paid promptly after the Effective Date.

#### **4.4 Standard of Care; Exculpation.**

(a) As used herein, the term “**Trust Indemnified Party**” shall mean each of (i) the Trustee, and (ii) the officers, employees, consultants, advisors, attorneys, and agents of each of the Distribution Trust and the Trustee.

(b) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall not have or incur any liability for actions taken or omitted in their capacities as Trust Indemnified Parties, or on behalf of the Distribution Trust, except those acts found by a final order of a court of competent jurisdiction (“**Final Order**”) to be arising out of their willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Distribution Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of, or due to, the implementation or administration of the Plan, the Confirmation Order, or this Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Distribution Trust Assets.

(c) To the extent that, at law or in equity, the Trust Indemnified Parties have duties (including fiduciary duties) or liability related thereto, to the Distribution Trust or the Distribution Trust Beneficiaries, it is hereby understood and agreed by the Parties that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the



duties and liabilities expressly set forth in this Trust Agreement with respect to the Trust Indemnified Parties; *provided, however*, that with respect to the Trust Indemnified Parties the duties of care and loyalty are not eliminated but are limited and subject to the terms of this Trust Agreement, including but not limited to this Section 4.4 and its subparts.

(d) The Distribution Trust will maintain appropriate insurance coverage for the protection of the Trust Indemnified Parties, as determined by the Trustee in his or her discretion.

#### **4.5 Protective Provisions.**

(a) Every provision of this Trust Agreement relating to the conduct or affecting the liability of, or affording protection to, Trust Indemnified Parties shall be subject to the provisions of this Section 4.5.

(b) In the event the Trustee retains counsel (including at the expense of the Distribution Trust), the Trustee shall be afforded the benefit of the attorney-client privilege with respect to all communications with such counsel, and in no event shall the Trustee be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege even if the communications with counsel had the effect of guiding the Trustee in the performance of duties hereunder. Any successor Trustee shall succeed to, and hold the same respective rights and benefits of, the predecessor for purposes of privilege, including the attorney-client privilege. No Party or other person may raise any exception to the attorney-client privilege described herein as any such exceptions are hereby waived by all Parties.

(c) No Trust Indemnified Party shall be personally liable under any circumstances, except for his or her own willful misconduct, bad faith, gross negligence or fraud as determined by a Final Order.

(d) No provision of this Trust Agreement shall require the Trust Indemnified Parties to expend or risk their own personal funds, or otherwise incur financial liability in the performance of their rights, duties and powers hereunder.

(e) In the exercise or administration of the Distribution Trust, the Trust Indemnified Parties (i) may act directly or through their respective agents, advisors, or attorneys pursuant to agreements entered into with any of them, and the Trust Indemnified Parties shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys have been selected by the Trust Indemnified Parties in good faith and with due care, and (ii) may consult with counsel, accountants and other professionals to be selected by them in good faith and with due care and employed by them, and shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other professionals.

#### **4.6 Indemnification.**

(a) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall be entitled to indemnification and reimbursement for reasonable fees and expenses (including attorneys' fees and costs, but excluding taxes in the nature of income taxes imposed on compensation paid to the Trust Indemnified Parties) in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Distribution Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of, or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case, except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith,

gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Distribution Trust Assets.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of the Trust Indemnified Parties in connection with any action, suit or proceeding, whether civil, administrative or arbitrative, from which they are indemnified by the Distribution Trust shall be paid by the Distribution Trust from the Distribution Trust Expense Reserve (or the Distribution Trust Assets, if such reserve is insufficient) in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trust Indemnified Parties, to repay such amount in the event that it shall be determined ultimately by Final Order that the Trust Indemnified Parties or any other potential indemnitee are not entitled to be indemnified by the Distribution Trust. The Trustee may, in his or her discretion, authorize an advance of reasonable expenses, costs and fees (including attorneys' fees and costs) to be incurred by or on behalf of the Trust Indemnified Parties, as set forth herein.

(c) The Trustee is authorized, but not required, to purchase and maintain appropriate amounts and types of insurance on behalf of the Trust Indemnified Parties, as determined by the Trustee, in his or her sole discretion, which may include insurance with respect to liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Trust Indemnified Party, and/or as an employee, agent, lawyer, advisor or consultant of any such person.

(d) The indemnification provisions of this Trust Agreement with respect to any Trust Indemnified Party shall survive the termination of such Trust Indemnified Party from the capacity for which such Trust Indemnified Party is indemnified. Modification of this Trust Agreement shall not affect any indemnification rights or obligations in existence at such time. In

making a determination with respect to entitlement to indemnification of any Trust Indemnified Party hereunder, the person, persons or entity making such determination shall presume that such Trust Indemnified Party is entitled to indemnification under this Trust Agreement, and any person seeking to overcome such presumption shall have the burden of proof to overcome the presumption.

(e) The rights to indemnification hereunder are not exclusive of other rights which any Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution.

**4.7 Trustee Independence.** The Trustee shall not, during the term of his or her service, hold a financial interest in, act as attorney or agent for, or serve as an officer or as any other professional for the Reorganized Debtors or any of the purchasers of the Debtors' assets. The Trustee shall also not act as an attorney, agent, or other professional for any Distribution Trust Beneficiary.

**4.8 No Bond.** The Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court or the Trustee decides, in his or her sole discretion, that such bond is in the best interests of the Distribution Trust.

**4.9 Burden of Proof.** In any proceeding brought by any of the Debtors, or any other person who is bound by this Trust Agreement challenging any action, determination or failure to act of the Trustee in discharge of his or her duties under this Trust Agreement on the basis that such action, determination or failure constitutes gross negligence, willful misconduct or fraud, the person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act constituted gross negligence, willful misconduct, or fraud. Notwithstanding anything to the contrary in this Trust Agreement or any duty otherwise existing

at law or equity, each determination, action or failure to act of the Trustee in the discharge of his or her duties under this Trust Agreement is, to the extent consistent with this Trust Agreement, hereby deemed to not constitute a breach of this Trust Agreement or any duty hereunder or existing at law, in equity or otherwise.

**4.10 Reliance by the Trustee.** The Trustee may absolutely rely, and shall be fully protected in acting or refraining from acting if he or she relies upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that he or she has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile or e-mail transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy his or herself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt. In the absence of gross negligence, willful misconduct, or fraud in respect of the Trustee's duties as found by a Final Order, or material breach of this Trust Agreement, the Trustee may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting (or, if applicable, not acting) thereon. The Trustee shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning this Trust Agreement, the Plan, the Confirmation Order, or any other document executed in connection therewith, and the Trustee shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon.

**4.11 Books and Records.** The Trustee shall be free, in his or her discretion to abandon, destroy or otherwise dispose of any books and records or copies thereof in his possession that the Trustee deems not necessary for the continued administration of the Plan, the Confirmation Order,

and Distribution Trust and not required to be retained under applicable law, without the need for any order of the Bankruptcy Court, and shall have no liability for same. This notice provision shall not create any right by any third party to access to privileged or confidential information held by the Distribution Trust.

#### **4.12 Privilege.**

(a) Subject to the terms of the Plan and the Confirmation Order, all of the Debtors' privileges (the "**Privileges**"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "**Transferred Privileges**"), shall be transferred, assigned and delivered to the Distribution Trust, without waiver, limitation or release, and shall vest with the Distribution Trust on the Effective Date and be jointly held by the Reorganized Debtors and the Distribution Trust on and after the Effective Date; *provided, however*, that notwithstanding the foregoing, Transferred Privileges do not include Privileges relating in any way to any rights, claims, or Causes of Action sold to any Purchaser or released under the Plan.

(b) Notwithstanding anything herein to the contrary, the Distribution Trust and the Reorganized Debtors shall each hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Distribution Trust.

(c) The Trustee shall have until two (2) years after the Effective Date to request documents or information subject to the Transferred Privileges (each an "**Information Request**"); *provided, however*, that with respect to any action involving Transferred Privileges filed on or

before two (2) years after the Effective Date, the Trustee may make an Information Request subject to the Transferred Privileges involved in such action until the final resolution of such action, including any appeals.

## ARTICLE V

### **TAX MATTERS**

**5.1 Treatment of Trust Assets Transfer.** For all United States federal income tax purposes (and, to the extent permitted, for state and local income tax purposes), all Parties shall treat the transfer of the Distribution Trust Assets to the Distribution Trust as (a) a transfer of the Distribution Trust Assets (subject to any obligations related to those assets) directly to the Distribution Trust Beneficiaries, followed by (b) the transfer by such Distribution Trust Beneficiaries of such Distribution Trust Assets to the Distribution Trust in exchange for Distribution Trust Interests (other than the Distribution Trust Assets allocable to Disputed Claims and held as a “disputed ownership fund” within the meaning of Section 1.468B-9 of the Treasury Regulations (“**Disputed Ownership Fund**”)). Accordingly, the Distribution Trust Beneficiaries shall be treated for United States federal income tax purposes (and, to the extent permitted, for state and local income tax purposes) as the grantors within the meaning of Section 677 of the IRC and deemed owners of their respective shares of the Distribution Trust Assets (other than the Distribution Trust Assets allocable to the Disputed Ownership Fund).

**5.2 Income Tax Status.**

(a) For United States federal income tax purposes (and for purposes of all state, local and other jurisdictions to the extent applicable) and other than as provided pursuant to Section 5.3(c) hereof, this Distribution Trust shall be treated as a liquidating trust pursuant to Section 301.7701-4(d) of the Treasury Regulations and as a grantor trust pursuant to Sections 671 through

679 of the IRC. To the extent consistent with Revenue Procedure 94-45 and not otherwise inconsistent with this Trust Agreement, this Trust Agreement shall be construed so as to satisfy the requirements for liquidating trust status.

(b) The Distribution Trust shall at all times to be administered so as to constitute a domestic trust for United States federal income tax purposes.

### **5.3 Tax Returns.**

(a) In accordance with Section 6012 of the IRC and Section 1.671-4(a) of the Treasury Regulations, the Trustee shall file with the IRS annual tax returns for the Distribution Trust on Form 1041 as a grantor trust pursuant to Section 1.671-4(a) of the Treasury Regulations. In addition, the Trustee shall file in a timely manner for the Distribution Trust such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. The Distribution Trust's items of taxable income, gain, loss, deduction, and/or credit (other than such items in respect of any assets allocable to, or retained on account of, the Disputed Ownership Fund) will be allocated to the Distribution Trust Beneficiaries in accordance with their relative ownership of Distribution Trust Interests. Within a reasonable time following the end of the taxable year, the Distribution Trust shall send to each Distribution Trust Beneficiary a separate statement setting forth such Distribution Trust Beneficiary's items of income, gain, loss, deduction or credit and will instruct each such Distribution Trust Beneficiary to report such items on his/her applicable income tax return.

(b) The Distribution Trust shall be responsible for payment, from the Distribution Trust Expense Reserve or the Distribution Trust Assets, of any taxes imposed on the Distribution Trust (including any taxes imposed on the Disputed Ownership Fund) or the Distribution Trust Assets. In accordance therewith, any taxes imposed on the Disputed Ownership



Fund or its assets will be paid from the Distribution Trust Expense Reserve or the Distribution Trust Assets.

(c) The Trustee may timely elect to treat any Distribution Trust Assets allocable to Disputed Claims as a Disputed Ownership Fund pursuant to Section 1.468B-9(c)(2)(ii) of the Treasury Regulations, and to the extent permitted by applicable law, shall report consistently for state and local income tax purposes. If such a Disputed Ownership Fund election is made, all parties (including the Trustee and the holders of Distribution Trust Interests) shall report for U.S. federal, state and local income tax purposes consistent with the foregoing. The Distribution Trust shall file all income tax returns with respect to any income attributable to the Disputed Ownership Fund and shall pay from the Distribution Trust Expense Reserve or the Distribution Trust Assets, consistent with Article IV.D.11(b) of the Plan, all U.S. federal, state and local income taxes attributable to such Disputed Ownership Fund based on the items of income, deduction, credit, or loss allocable thereto.

**5.4 Withholding of Taxes and Reporting Related to Distribution Trust Operations.** The Distribution Trust shall comply with all withholding, deduction and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Distribution Trust shall be subject to any applicable withholding, deduction and reporting requirements. The Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with any such withholding, deduction, payment, and reporting requirements. All amounts properly withheld or deducted from distributions to a Distribution Trust Beneficiary as required by applicable law and paid over to the applicable taxing authority for the account of such Distribution Trust Beneficiary shall be treated as part of the Distribution Trust Distribution to such Distribution Trust Beneficiary. To the extent that the operation of the

Distribution Trust or the liquidation of the Distribution Trust Assets creates a tax liability imposed on the Distribution Trust, the Distribution Trust shall timely pay such tax liability and any such payment shall be considered a cost and expense of the operation of the Distribution Trust payable without Bankruptcy Court order. Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Distribution Trust Beneficiaries shall be required to provide any information necessary to effect the withholding and reporting of such taxes. The Trustee may require each Distribution Trust Beneficiary to furnish to the Distribution Trust (or its designee) its social security number, or employer or taxpayer identification number as assigned by the IRS, and complete any related documentation (including but not limited to a Form W-8BEN, Form W-8BEN-E, or Form W-9, as applicable) (the “**Tax Documents**”). The Trustee may condition any and all distributions to any Distribution Trust Beneficiary upon the timely receipt of properly executed Tax Documents and receipt of such other documents as the Trustee reasonably requests, and in accordance with the Plan and Confirmation Order. If the Distribution Trust Beneficiary fails to complete and return to the Trustee (or Disbursing Agent, as applicable) the appropriate Tax Documents within one hundred one hundred and eighty (180) days of the request by the Trustee (or Disbursing Agent, as applicable), then such Holder shall have its Claim forfeited and shall be forever barred, estopped, and enjoined from asserting any such Claim against the Estates. In such cases, any Cash held for payment on account of such Claims shall be treated as Distribution Trust Assets, free of any Claims of such Holder with respect thereto.

**5.5      Valuation.** As soon as possible after the Effective Date, the Trustee shall make a good faith valuation of the Distribution Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties for all United States federal

and applicable state and local income tax purposes. The Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Distribution Trust that are required by any governmental unit for taxing purposes.

**5.6 Expedited Determination of Taxes.** The Trustee may request an expedited determination of taxes of the Distribution Trust, under Section 505 of the Bankruptcy Code for all returns filed for, or on behalf of, the Distribution Trust for all taxable periods through the termination of the Distribution Trust.

## ARTICLE VI

### **GENERAL PROVISIONS**

**6.1 Irrevocability.** To the fullest extent permitted by applicable law, the Distribution Trust is irrevocable.

**6.2 Term; Termination.**

(a) The term for which the Distribution Trust exists shall commence on the Effective Date and shall terminate pursuant to the provisions of this Section 6.2.

(b) The Trustee shall make continuing efforts to monetize any non-liquid Distribution Trust Assets.

(c) The Trustee and the Distribution Trust shall be discharged or dissolved, as the case may be, at such time that is reasonable based on all the facts and circumstances as (i) the Trustee determines that the pursuit of additional Retained Causes of Actions is not likely to yield sufficient additional Cash to justify further pursuit of such Causes of Action, or (ii) all distributions of Cash and other Distribution Trust Assets required to be made by the Trustee under the Plan, the Confirmation Order, and this Trust Agreement have been made in accordance with provisions of the Plan, the Confirmation Order, and this Trust Agreement, *provided, however*, that in no event

shall the Distribution Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made prior to the fifth (5th) anniversary without the need for a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Distribution Trust as a liquidating trust for federal income tax purposes, determines that a fixed period extension, not to exceed five (5) years, is necessary to facilitate or complete the recovery on and liquidation of the Distribution Trust Assets. Any extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term.

(d) The Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases, *provided* that, matters concerning Claims may be heard and adjudicated in one of the Debtors' Chapter 11 Cases that remains open regardless of whether the applicable Claim is against a Debtor in a Chapter 11 Case that is closed. Upon the filing of a motion to close the last Chapter 11 Case remaining open, the Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c) as set forth in Article IV.I of the Plan.

**6.3 Amendments.** Any amendment to, or modification of, this Trust Agreement may be made in writing and only pursuant to an order of the Bankruptcy Court; *provided, however*, the Trustee may amend this Trust Agreement from time to time without the consent, approval or other authorization of, but with notice to, the Bankruptcy Court, to make: (a) minor modifications or clarifying amendments necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; or (b) modifications to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or foreign governmental entity. Notwithstanding the foregoing, no amendment or modification of this Trust

Agreement shall modify this Trust Agreement in a manner that is inconsistent with the Plan or the Confirmation Order other than to make minor modifications or clarifying amendments as necessary to enable the Trustee to effectuate the provisions of this Trust Agreement. Notwithstanding the foregoing, neither this Trust Agreement, nor any Exhibit to this Trust Agreement, shall be modified or amended in any way that could jeopardize, impair, or modify the Distribution Trust's "liquidating trust" status.

**6.4      Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

**6.5      Notices.**

(a) Notices to Distribution Trust Beneficiaries shall be given in accordance with such address for each such Holder as indicated on the Debtors' records as of the date of any such distribution pursuant to the procedures set forth in Section 3.4(m) of this Trust Agreement.

(b) Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or e-mail addresses designated below, or to such other addresses or e-mail addresses as may hereafter be furnished in writing to each of the other Parties listed below in compliance with the terms hereof.

To the Distribution Trust:

Steven Balasiano  
MHR Advisory Group, LLC  
c/o Province, LLC  
11111 Santa Monica Blvd, Ste. 525  
Los Angeles, CA 90025  
Telephone: (347) 832-5595  
Email: steven@mhradvisory.com

With a copy (which shall not constitute notice) to Counsel to the Distribution Trustee:

Lowenstein Sandler LLP  
Jeffrey L. Cohen, Esq.  
Eric Chafetz, Esq.  
Jordana Renert, Esq.  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 262-6700  
Email: jcohen@lowenstein.com  
Email: echafetz@lowenstein.com  
Email: jrenert@lowenstein.com

To the Reorganized Debtors:

Camber Operating Company, Inc  
Ewa Kozicz  
Michelle Barone  
3350 Virginia Street, 2nd Floor  
Miami, FL 33133  
Telephone: (212) 339-1903  
Email: michelle@anthelioncap.com  
Email: ewa@anthelioncap.com

With a copy (which shall not constitute notice) to:

John Butler  
Sidley Austin LLP  
787 7th Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Email: john.butler@sidley.com

(c) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses.

**6.6 Successors and Assigns.** The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Distribution Trust, the Trustee, and their respective successors and assigns, except that neither the Distribution Trust, nor the Trustee, may assign or otherwise

transfer any of their rights or obligations, if any, under this Trust Agreement except in accordance with Section 4.2(d) above.

**6.7 Limitation on Distribution Trust Interests for Securities Law Purposes.**

Distribution Trust Interests (a) shall not be assigned, conveyed, hypothecated, pledged, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will, under the laws of descent and distribution or otherwise by operation of law; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest.

**6.8 Exemption from Registration.** The Parties hereto intend that the interests of the Distribution Trust Beneficiaries under this Trust Agreement shall not be “securities” under applicable laws, but none of the Parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If it should be determined that any such interests constitute “securities,” the Parties hereto intend that the exemption provisions of Section 1145 of the Bankruptcy Code will be satisfied and the offer and sale under the Plan of the Distribution Trust Interests will be exempt from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations or that the issuance of such interests shall be exempt from the registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act, regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations.

**6.9 Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein, and in the documents referred to herein

(including the Plan and the Confirmation Order), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

**6.10 Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

**6.11 Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; *provided, however*, that the Parties hereto intend that the provisions hereof shall control and there shall not be applicable to the Distribution Trust, the Trustee, or this Trust Agreement, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to, or regulate in, a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges; (b) affirmative requirements to post bonds for the Trustee, officers, agents, or employees of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (d) fees or other sums payable to the Trustee, officers, agents, or employees of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or



limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of Distribution Trust Assets; (g) the existence of rights or interests (beneficial or otherwise) in Distribution Trust Assets; (h) the ability of beneficial owners or other persons to terminate or dissolve the Distribution Trust; or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustee or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Trustee set forth or referenced in this Trust Agreement.

**6.12 Effectiveness.** This Trust Agreement shall become effective on the Effective Date.

IN WITNESS WHEREOF, the Trustee has executed this Trust Agreement this 12th day of March, 2024.

**TRUSTEE**

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Steven Balasiano, not individually but solely  
in his capacity as Distribution Trustee of the  
PTRA Distribution Trust

**EXHIBIT B-1**

**Amended TopCo Bylaws**

**(Exhibit D-1 to Plan Supplement)**

**AMENDED AND RESTATED BYLAWS**  
**OF**  
**PRODIGY INVESTMENTS HOLDINGS, INC.**  
(hereinafter called the “**Corporation**”)

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1.1. Place of Meetings. Meetings of the stockholders of the Corporation for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors of the Corporation (the “**Board**”). The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communications as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”).

Section 1.2. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly be brought before the meeting in accordance with these amended and restated bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof, these “**Bylaws**”) shall be held on such date and at such time as shall be designated from time to time by the Board. The Chairperson of the Board, the Chief Executive Officer or the Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

Section 1.3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation (including the terms of any certificate of designation with respect to any series of preferred stock), as amended and restated from time to time (the “**Certificate of Incorporation**”), special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by the Chairperson of the Board, the Chief Executive Officer or the Board or a majority of stockholders. If any person(s) other than the Board calls a special meeting, the request shall (a) be in writing, (b) specify the general nature of the business proposed to be transacted and (c) be delivered personally or sent by registered mail, return receipt requested, or by facsimile transmission to the Chairperson of the Board, Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) or Secretary. The officer of the Company receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the place, if any, and hour determined by the Board, which shall not be fewer than 30 nor more than 120 days after the date of receipt of the request. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously called by any of them.

Section 1.4. Notice. Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which

shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law or the Certificate of Incorporation, written notice of any meeting shall be given either personally, by mail or by electronic transmission (if permitted under the circumstances by the DGCL) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the stock transfer books of the Corporation. If notice is given by means of electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any stockholder may waive notice of any meeting before or after the meeting. The attendance of a stockholder at any meeting shall constitute a waiver of notice at such meeting, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders need be specified in any waiver of notice unless so required by law.

Section 1.5. Adjournments. Any meeting of stockholders of the Corporation may be adjourned or recessed from time to time to reconvene at the same or some other place, if any, by holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, though less than a quorum, or by any officer entitled to preside at or to act as secretary of such meeting, and notice need not be given of any such adjourned or recessed meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or recessed meeting, are (a) announced at the meeting at which the adjournment or recess is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned or recessed meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, notice of the adjourned meeting in accordance with the requirements of Section 1.4 of these Bylaws shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the Corporation's capital stock

issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to such vote. If a quorum shall not be present or represented at any meeting of stockholders, the chairperson of the meeting, any officer entitled to preside at or to act as secretary of such meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 1.5 of these Bylaws, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7. Voting.

(a) Matters Other Than Election of Directors. Any matter brought before any meeting of stockholders of the Corporation, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the Corporation's capital stock present in person or represented by proxy at the meeting and entitled to vote on such matter, voting as a single class, unless the matter is one upon which, by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Except as provided in the Certificate of Incorporation, every stockholder having the right to vote shall have one vote for each share of stock having voting power registered in such stockholder's name on the books of the Corporation. Such votes may be cast in person or by proxy as provided in Section 1.10 of these Bylaws. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Election of Directors. Except as provided in Section 2.8 of these Bylaws, election of directors at all meetings of the stockholders at which directors are to be elected shall be by a plurality of the votes cast.

Section 1.8. Voting of Stock of Certain Holders. Shares of stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting. A stockholder whose shares of stock of the Corporation are pledged shall be entitled to vote such shares, unless on the transfer records of the Corporation such stockholder has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or the pledgee's proxy, may vote such shares.

Section 1.9. Treasury Stock. Shares of stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of directors of which are held by the Corporation, shall not be voted at any meeting of stockholders of the Corporation and shall not be counted in the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this Section 1.9 shall limit the

right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 1.10. Proxies. Each stockholder entitled to vote at a meeting of stockholders of the Corporation may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Section 1.11. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

Section 1.12. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make or have prepared and made, at least ten (10) days before every meeting of stockholders of the Corporation, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 1.12 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 1.13. Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the

day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.13 at the adjourned meeting.

Section 1.14. Organization and Conduct of Meetings. The Chairperson of the Board shall act as chairperson of meetings of stockholders of the Corporation (the “**Chairperson of the Meeting**”). The Board may designate any other director or officer of the Corporation to act as Chairperson of the Meeting in the absence of the Chairperson of the Board, and the Board may further provide for determining who shall act as Chairperson of the Meeting in the absence of the Chairperson of the Board and such designee. If the Chairperson of the Board is absent and the Board has not designated a replacement for Chairperson of the Meeting, the Vice Chairperson of the Board, if any, or in the absence of the foregoing person, the Chief Executive Officer, if any, or in the absence of the foregoing person, a Vice President of the Company, if any, or in the absence of the foregoing person, the Secretary, or in the absence of the foregoing person, a chairperson chosen at such meeting by the holders of a majority of the shares present or represented at such meeting, shall serve as the Chairperson of the Meeting. The Board may adopt by resolution such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants. Except to the extent inconsistent with the rules and regulations as adopted by the Board, the Chairperson of the Meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairperson of the Meeting, are appropriate for the proper conduct of the meeting. Except to the extent determined by the Board or the Chairperson of the Meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary, or in the Secretary’s absence an Assistant Secretary, shall act as secretary of the meeting of stockholders, but if neither the Secretary nor an Assistant Secretary is present, the Chairperson of the Meeting shall appoint any person present to act as secretary of the meeting.

## ARTICLE II

### DIRECTORS

Section 2.1. Number; Term. The Board shall consist of one or more members. Unless the Certificate of Incorporation fixes the number of directors, the number of directors shall be fixed, from time to time, exclusively by the Board, subject to any limitations in any stockholder agreement or the rights of the holders of preferred stock with respect to the election of directors, if any. Each director shall hold office until a successor is duly elected and qualified or until the director's death, resignation, disqualification or removal.

Section 2.2. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 2.3. Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairperson of the Board (if there be one), the Chief Executive Officer or the Board and shall be held at such place, on such date and at such time as he, she or it shall specify.

Section 2.4. Notice. Notice of any meeting of the Board stating the place, date and time of the meeting shall be given to each director by mail posted not less than five (5) days before the date of the meeting, by nationally recognized overnight courier deposited not less than two (2) days before the date of the meeting or by email, facsimile or other means of electronic communication delivered or sent not less than twenty-four (24) hours before the date and time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. If mailed or sent by overnight courier, such notice shall be deemed to be given at the time when it is deposited in the United States mail with first class postage prepaid or deposited with the overnight courier. Notice by facsimile or other electronic transmission shall be deemed given when the notice is transmitted. Any director may waive notice of any meeting before or after the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where the director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting unless so required by law.

Section 2.5. Chairperson of the Board. The Chairperson of the Board shall be chosen from among the directors and may be the Chief Executive Officer. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairperson of the Board shall preside at all meetings of stockholders and of the Board. The Chairperson of the Board shall have such other powers and duties as may from time to time be assigned by the Board.

Section 2.6. Organization. At each meeting of the Board, the Chairperson of the Board, or, in the Chairperson's absence, a director chosen by a majority of the directors present, shall act as chairperson. The Secretary shall act as secretary at each meeting of the Board. In case the Secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary



and all assistant secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.7. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Subject to any limitations in any stockholder agreement or the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation in accordance with the provisions of the DGCL.

Section 2.8. Newly Created Directorships and Vacancies. Any newly created directorships and any vacancies on the Board may be filled by the affirmative votes of a majority of the remaining members of the Board, although less than a quorum. A director so elected shall hold office until the earlier of the expiration of the term of the director whom he or she has replaced, the proper election and qualification of a successor or that director's death, resignation, disqualification or removal.

Section 2.9. Quorum. At all meetings of the Board, a majority of directors constituting the Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 2.10. Actions of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee.

Section 2.11. Telephonic Meetings. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.11 shall constitute presence in person at such meeting.

Section 2.12. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation and, to the extent permitted by law, to have and exercise such authority as may be provided for in the resolutions creating such committee, as such resolutions may be amended from time to time. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at

the meeting in the place of any absent or disqualified member. Each committee shall keep regular minutes and report to the Board when required. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have the power at any time to fill vacancies in, to change the membership of or to dissolve any such committee.

Section 2.13. Compensation. The Board shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board or any committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for service as director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Directors who are full-time employees of the Corporation shall not receive any compensation for their service as director.

Section 2.14. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes the contract or transaction.

### ARTICLE III

#### OFFICERS

Section 3.1. General. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer (or, alternatively, a President), a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairperson of the Board (who must be a director), a Vice Chairperson of the Board (who must be a director), a President, a Chief Financial Officer, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers as the Board from time to time may deem appropriate. Any two or more offices may be held by the same person. The officers of the Corporation need not be stockholders of the Corporation nor, except in the

case of the Chairperson of the Board or the Vice Chairperson of the Board, directors of the Corporation.

Section 3.2. Election; Term. The Board shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board, and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the Board. Any officer may resign upon notice given in writing or electronic transmission to the Chief Executive Officer (or, if none, the President) or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event. Any vacancy occurring in any office of the Corporation shall be filled in the manner prescribed in this Article III.

Section 3.3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer (or, if none, the President) or any other officer authorized to do so by the Board, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 3.4. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision over the business of the Corporation and shall direct the affairs and policies of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 3.5. President. The President (if any) shall act in a general executive capacity and shall assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chief Executive Officer or if there be none, perform all duties of the Chief Executive Officer.

Section 3.6. Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. The Executive Vice Presidents (if any), Senior Vice Presidents (if any) and such other Vice Presidents as shall have been chosen by the Board shall have such powers and shall perform such duties as shall be assigned to them by the Board.

Section 3.7. Secretary. The Secretary shall give the requisite notice of meetings of stockholders and directors and shall record the proceedings of such meetings and, besides the Secretary's powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.8. Treasurer. The Treasurer shall have charge of the funds and securities of the Corporation and shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.9. Assistant Secretaries. Assistant Secretaries (if any) shall assist the Secretary in the discharge of the Secretary's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Secretary, shall perform the duties of the Secretary's office, subject to the control of the Board.

Section 3.10. Assistant Treasurers. Assistant Treasurers (if any) shall assist the Treasurer in the discharge of the Treasurer's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Treasurer, shall perform the duties of the Treasurer's office, subject to the control of the Board.

Section 3.8. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

#### ARTICLE IV

##### STOCK

Section 4.1. Stock Certificates. Unless otherwise provided by resolution of the Board, each class or series of shares of the Corporation's capital stock shall be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two authorized officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Uncertificated shares shall be transferable only on the books of the Corporation by the holder thereof in person or by attorney upon presentment of proper evidence of succession, assignation or authority to transfer in accordance with the customary procedures for transferring shares in uncertificated form.

Section 4.2. Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date,

which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

Section 4.3. Dividends. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

Section 4.4. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## ARTICLE V

### MISCELLANEOUS

Section 5.1. Contracts. The Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument or other document in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board. Unless otherwise fixed by the Board, the fiscal year of the Corporation shall be the calendar year.

Section 5.4. Corporate Seal. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 5.5. Offices. The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept (subject to any applicable law) outside the State of Delaware at the principal executive offices of the Corporation or at such other place or places as may be designated from time to time by the Board.

Section 5.6. Conflict with Certificate of Incorporation. These Bylaws are adopted subject to the Certificate of Incorporation. Whenever these Bylaws may conflict with the

Certificate of Incorporation, such conflict shall be resolved in favor of the Certificate of Incorporation.

Section 5.7. Execution in Counterpart and by Electronic Means. Subject to the DGCL, signatures on any notice, resolution, requisition, statement or other document required or permitted to be executed for the purposes of the DGCL may be obtained by means of facsimile or other electronic means or by execution of several documents of like form, each of which is executed by one or more persons, and such documents, when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one document for the purposes of the DGCL.

Section 5.8. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or any regular or special meeting of the Board or committee thereof need be specified in any waiver of notice of such meeting unless so required by law.

Section 5.9. Forum for Certain Actions.

(a) Forum. Unless a majority of the Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws (in each case, as may be amended from time to time), (iv) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants.

(b) Personal Jurisdiction. If any action the subject matter of which is within the scope of subparagraph (a) of this Section 5.9 is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce subparagraph (a) of this Section 5.9 (an "**Enforcement Action**") and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

(c) Enforceability. If any provision of this Section 5.9 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason

whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 5.8, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

Section 5.10. Notice to Stockholders Sharing an Address.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice permitted under this Section 5.10, shall be deemed to have consented to receiving such single written notice. This Section 5.10 shall not apply to Section 164, Section 296, Section 311, Section 312 or Section 324 of the DGCL.

Section 5.11. Notice to Person with Whom Communication is Unlawful.

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 5.12. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## ARTICLE VI

### AMENDMENTS

These Bylaws may be adopted, amended, altered or repealed by the Board or by the stockholders of the Corporation by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; provided, however, that, in the case of any adoption, amendment, alteration or repeal of these Bylaws by the stockholders of the Corporation, notwithstanding any other provision of these Bylaws, and in addition to any other vote that may be required by law or the terms of any series of preferred stock, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with Sections 1.3, 1.7(b), 1.11, 2.1 or 2.8 or this Article VI.

\* \* \*

Adopted as of: March 13, 2024



**EXHIBIT C-1**

**Amended TopCo CoI**

**(Exhibit D-2 to Plan Supplement)**

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**PROTERRA INC**

Proterra Inc, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”),

DOES HEREBY CERTIFY THAT:

1. The name of the Corporation is Proterra Inc and that the Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on June 11, 2021 under the name ArcLight Clean Transition Corp.

2. This Amended and Restated Certificate of Incorporation, which both restates and amends the provisions of the Certificate of Incorporation was duly approved and authorized in accordance with Sections 242, 245 and 303(a), (b) and (c) of the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered on March 6, 2024, confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Proterra Inc and its Debtor Affiliate*, March 1, 2024 (including all exhibits thereto and as amended, modified and supplemented from time to time, the “Plan”) filed in the cases commenced under title 11 of the United States Code, 11 U.S.C. §§ 101–1532, jointly administered as Case No. 23-11120 pending before the Bankruptcy Court).

3. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety so as to read as follows:

FIRST: The name of the corporation (which is hereinafter referred to as the “Corporation”) is Prodigy Investments Holdings, Inc.

SECOND: The address of the Corporation’s registered office in the State of Delaware is 850 New Burton Road, Suite 201, Dover, Kent County, Delaware 19904. The name of the Corporation’s registered agent at such address is Cogency Global Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 1,000,000 shares of common stock with a par value of \$0.0001 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation (the “Board”) is expressly authorized to make, alter or repeal the Bylaws of the Corporation, subject to any specific limitation on such power contained

in any Bylaws adopted by the stockholders. Elections of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

SIXTH: No director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (a) of a director or officer for any breach of the director's or officer's duty of loyalty to the Corporation or its stockholders, (b) of a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) of a director under Section 174 of the General Corporation Law of Delaware, (d) of a director or officer for any transaction from which the director or officer derived an improper personal benefit or (e) of an officer in any action by or in the right of the Corporation. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of Delaware, as so amended. Any repeal or modification of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification. For purposes of this Article Sixth, "officer" shall have the meaning provided in Section 102(b)(7) of the General Corporation Law of Delaware, as it presently exists or may hereafter be amended from time to time.

SEVENTH: Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law of Delaware as it may be in effect from time to time.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

NINTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware or the Certificate of Incorporation or bylaws of the Corporation or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

TENTH:

1. Right to Indemnification and Advancement. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "Proceeding"),

by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of any other Person or enterprise, including, without limitation, service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action or inaction in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of Delaware, as the same exists as of the date hereof or as may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide both prior to such amendment and as of the date hereof), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes of the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or trustee and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except as provided in Section 2 of this Article Tenth, the Corporation shall indemnify any such person seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article Tenth shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in connection with any such Proceeding in advance of its final disposition; *provided, however*, that, if the General Corporation Law of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article Tenth or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors, officers and trustees.

2. Right of Claimant to Bring Suit. If a claim under Section 1 of this Article Tenth is not paid in full by the Corporation within thirty days after written notice thereof has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation, and as to any such other action as to which it shall not be a defense) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is

proper in the circumstances because he or she has met the applicable standard of conduct under the General Corporation Law of Delaware, nor an actual determination by the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Indemnitor of First Resort. The Corporation acknowledges that the directors designated by the Majority Holder (as defined below) (collectively, the “Fund Directors” and each, a “Fund Director”) have certain rights to indemnification, advancement of expenses and/or insurance provided by their employers and certain of their Affiliates (collectively, the “Fund Indemnitors”). To the extent the Corporation has an indemnity obligation hereunder, the Corporation shall (a) act as the indemnitor of first resort (i.e., its obligations to the Fund Directors are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such directors are secondary), (b) be required to advance the full amount of expenses incurred by the Fund Directors and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Certificate of Incorporation of the Corporation (or any other agreement between the Corporation and a Fund Director), without regard to any rights a Fund Director may have against the Fund Indemnitors and (c) irrevocably waive, relinquish and release the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Fund Director with respect to any claim for which such director has sought indemnification from the Corporation shall affect the foregoing. The Corporation shall promptly reimburse upon demand the Fund Indemnitors making any advancement or payment on behalf of a Fund Director with respect to any such claim, and, to the extent not fully reimbursed by the Corporation, the Fund Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of such director against the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition conferred in this Article Tenth shall not be (and they shall not be deemed to be) exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the Corporation or another corporation, or of a partnership, joint venture, trust or other enterprise against any expense, liability or loss (as such terms are used in this Article Tenth), whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

6. Impairment of Existing Rights. Any repeal or modification of this Article Tenth shall not impair or otherwise affect any rights, or obligations then existing with respect to

any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

7. Construction and Presumption. This Article Tenth shall be liberally construed in favor of indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition. There shall be a rebuttable presumption that a claimant under this Article Tenth is entitled to such indemnification and the Corporation shall bear the burden of proving by a preponderance of the evidence that such claimant is not so entitled to indemnification.

8. Confidentiality. Any finding that a person asserting a claim for indemnification pursuant to this Article Tenth is not entitled to such indemnification, and any non-public information which may support such finding, shall be held in confidence to the extent permitted by law and shall not be disclosed to any third party.

9. Severability. If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to require the Corporation to indemnify and advance expenses.

#### ELEVENTH:

1. In recognition and anticipation that (a) certain directors, principals, members, officers, associated funds, employees and/or other representatives of the Majority Holder may serve as directors, officers or agents of the Corporation, (b) the Majority Holder may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article Eleventh are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Majority Holder or the Non-Employee Directors and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. None of (a) the Majority Holder or (b) any Non-Employee Director (including, with respect to any Non-Employee Director who serves as an officer of the Corporation, in both his or her director and officer capacities) or his or her Affiliates (the Persons identified in clauses (a) and (b) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 4 of this Article Eleventh. Subject to said Section 4 of this Article Eleventh, in the event that any Identified Person acquires knowledge of a potential transaction or other matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

3. The Corporation and its Affiliates do not have any rights in or to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer, client or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

4. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person in writing solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 2 of this Article Eleventh shall not apply to any such corporate opportunity.

5. In addition to and notwithstanding the foregoing provisions of this Article Eleventh, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (b) from its nature, is not in the line of the Corporation’s business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

6. The Corporation shall not, without the prior written consent of the Majority Holder, amend, modify or revoke the provisions set forth in this Article Eleventh or any of the related definitions in Article Thirteenth at any time the Majority Holder holds any stock. Each stockholder of the Corporation hereby agrees to take all actions necessary or desirable to effect the foregoing sentence, including voting for or consenting to, or voting against or refusing to consent to, amendments to the Certificate of Incorporation (whether effected by merger, consolidation or otherwise) in order to give effect to the immediately preceding sentence. If any provision or provisions of this Article Eleventh or any of the related definitions in Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each such portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law. This Article Eleventh or any of the related definitions in Article Thirteenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the bylaws of the Corporation, applicable law, any agreement or otherwise. This Article Eleventh or any of the related definitions in Article Thirteenth supersedes any conflicting corporate policies (including, without limitation, any procedures required under any corporate policy).

7. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the corporation shall be deemed to have notice of and to have consented to the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth.

TWELFTH: The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Article Twelfth (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

THIRTEENTH: As used in this Certificate of Incorporation, the following terms shall have the following meaning:



1. “Affiliate” of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

2. “Majority Holder” means Anthelion Capital Partners LLC and its Affiliates (other than the Corporation and the Subsidiaries of the Corporation, if any) and their successors and assigns.

3. “Person” means an individual, corporation, limited liability company or partnership, association, joint stock company, trust, joint venture, unincorporated organization, the United States of America or any other nation, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, or other entity of any nature, including, without limitation, any pension, profit sharing or other benefit plan or trust.

4. “Subsidiary” means: (a) any Person of which the Corporation owns, directly or indirectly, securities having a majority of the voting power in electing the board of directors directly or through one or more subsidiaries (or, in the case of a partnership, limited liability company or other similar entity, securities conveying, directly or indirectly, a majority of the economic interests in such partnership or entity), or (b) any other Person of which the Corporation or any Subsidiary serves as general partner or managing member. The term Subsidiary shall include all Subsidiaries of such Subsidiary.

\* \* \*

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by a duly authorized officer of the Corporation, this 13<sup>th</sup> day of March 2024.

/s/ Ewa Kozicz

Name: Ewa Kozicz

Title: President, Secretary, and Treasurer

**EXHIBIT D-1**

**Amended OpCo Bylaws**

**(Exhibit D-3 to Plan Supplement)**

**AMENDED AND RESTATED BYLAWS  
OF  
CAMBER OPERATING COMPANY, INC.**  
(hereinafter called the “**Corporation**”)

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1.1. Place of Meetings. Meetings of the stockholders of the Corporation for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors of the Corporation (the “**Board**”). The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communications as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”).

Section 1.2. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly be brought before the meeting in accordance with these amended and restated bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof, these “**Bylaws**”) shall be held on such date and at such time as shall be designated from time to time by the Board. The Chairperson of the Board, the Chief Executive Officer or the Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

Section 1.3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation (including the terms of any certificate of designation with respect to any series of preferred stock), as amended and restated from time to time (the “**Certificate of Incorporation**”), special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by the Chairperson of the Board, the Chief Executive Officer or the Board or a majority of stockholders. If any person(s) other than the Board calls a special meeting, the request shall (a) be in writing, (b) specify the general nature of the business proposed to be transacted and (c) be delivered personally or sent by registered mail, return receipt requested, or by facsimile transmission to the Chairperson of the Board, Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) or Secretary. The officer of the Company receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the place, if any, and hour determined by the Board, which shall not be fewer than 30 nor more than 120 days after the date of receipt of the request. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously called by any of them.

Section 1.4. Notice. Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which

shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law or the Certificate of Incorporation, written notice of any meeting shall be given either personally, by mail or by electronic transmission (if permitted under the circumstances by the DGCL) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the stock transfer books of the Corporation. If notice is given by means of electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any stockholder may waive notice of any meeting before or after the meeting. The attendance of a stockholder at any meeting shall constitute a waiver of notice at such meeting, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders need be specified in any waiver of notice unless so required by law.

Section 1.5. Adjournments. Any meeting of stockholders of the Corporation may be adjourned or recessed from time to time to reconvene at the same or some other place, if any, by holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, though less than a quorum, or by any officer entitled to preside at or to act as secretary of such meeting, and notice need not be given of any such adjourned or recessed meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or recessed meeting, are (a) announced at the meeting at which the adjournment or recess is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned or recessed meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, notice of the adjourned meeting in accordance with the requirements of Section 1.4 of these Bylaws shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the Corporation's capital stock

issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to such vote. If a quorum shall not be present or represented at any meeting of stockholders, the chairperson of the meeting, any officer entitled to preside at or to act as secretary of such meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 1.5 of these Bylaws, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7. Voting.

(a) Matters Other Than Election of Directors. Any matter brought before any meeting of stockholders of the Corporation, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the Corporation's capital stock present in person or represented by proxy at the meeting and entitled to vote on such matter, voting as a single class, unless the matter is one upon which, by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Except as provided in the Certificate of Incorporation, every stockholder having the right to vote shall have one vote for each share of stock having voting power registered in such stockholder's name on the books of the Corporation. Such votes may be cast in person or by proxy as provided in Section 1.10 of these Bylaws. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Election of Directors. Except as provided in Section 2.8 of these Bylaws, election of directors at all meetings of the stockholders at which directors are to be elected shall be by a plurality of the votes cast.

Section 1.8. Voting of Stock of Certain Holders. Shares of stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting. A stockholder whose shares of stock of the Corporation are pledged shall be entitled to vote such shares, unless on the transfer records of the Corporation such stockholder has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or the pledgee's proxy, may vote such shares.

Section 1.9. Treasury Stock. Shares of stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of directors of which are held by the Corporation, shall not be voted at any meeting of stockholders of the Corporation and shall not be counted in the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this Section 1.9 shall limit the

right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 1.10. Proxies. Each stockholder entitled to vote at a meeting of stockholders of the Corporation may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Section 1.11. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

Section 1.12. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make or have prepared and made, at least ten (10) days before every meeting of stockholders of the Corporation, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 1.12 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 1.13. Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the

day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.13 at the adjourned meeting.

Section 1.14. Organization and Conduct of Meetings. The Chairperson of the Board shall act as chairperson of meetings of stockholders of the Corporation (the “**Chairperson of the Meeting**”). The Board may designate any other director or officer of the Corporation to act as Chairperson of the Meeting in the absence of the Chairperson of the Board, and the Board may further provide for determining who shall act as Chairperson of the Meeting in the absence of the Chairperson of the Board and such designee. If the Chairperson of the Board is absent and the Board has not designated a replacement for Chairperson of the Meeting, the Vice Chairperson of the Board, if any, or in the absence of the foregoing person, the Chief Executive Officer, if any, or in the absence of the foregoing person, a Vice President of the Company, if any, or in the absence of the foregoing person, the Secretary, or in the absence of the foregoing person, a chairperson chosen at such meeting by the holders of a majority of the shares present or represented at such meeting, shall serve as the Chairperson of the Meeting. The Board may adopt by resolution such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants. Except to the extent inconsistent with the rules and regulations as adopted by the Board, the Chairperson of the Meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairperson of the Meeting, are appropriate for the proper conduct of the meeting. Except to the extent determined by the Board or the Chairperson of the Meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary, or in the Secretary’s absence an Assistant Secretary, shall act as secretary of the meeting of stockholders, but if neither the Secretary nor an Assistant Secretary is present, the Chairperson of the Meeting shall appoint any person present to act as secretary of the meeting.

## ARTICLE II

### DIRECTORS



Section 2.1. Number; Term. The Board shall consist of one or more members. Unless the Certificate of Incorporation fixes the number of directors, the number of directors shall be fixed, from time to time, exclusively by the Board, subject to any limitations in any stockholder agreement or the rights of the holders of preferred stock with respect to the election of directors, if any. Each director shall hold office until a successor is duly elected and qualified or until the director's death, resignation, disqualification or removal.

Section 2.2. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 2.3. Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairperson of the Board (if there be one), the Chief Executive Officer or the Board and shall be held at such place, on such date and at such time as he, she or it shall specify.

Section 2.4. Notice. Notice of any meeting of the Board stating the place, date and time of the meeting shall be given to each director by mail posted not less than five (5) days before the date of the meeting, by nationally recognized overnight courier deposited not less than two (2) days before the date of the meeting or by email, facsimile or other means of electronic communication delivered or sent not less than twenty-four (24) hours before the date and time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. If mailed or sent by overnight courier, such notice shall be deemed to be given at the time when it is deposited in the United States mail with first class postage prepaid or deposited with the overnight courier. Notice by facsimile or other electronic transmission shall be deemed given when the notice is transmitted. Any director may waive notice of any meeting before or after the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where the director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting unless so required by law.

Section 2.5. Chairperson of the Board. The Chairperson of the Board shall be chosen from among the directors and may be the Chief Executive Officer. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairperson of the Board shall preside at all meetings of stockholders and of the Board. The Chairperson of the Board shall have such other powers and duties as may from time to time be assigned by the Board.

Section 2.6. Organization. At each meeting of the Board, the Chairperson of the Board, or, in the Chairperson's absence, a director chosen by a majority of the directors present, shall act as chairperson. The Secretary shall act as secretary at each meeting of the Board. In case the Secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary

and all assistant secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.7. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Subject to any limitations in any stockholder agreement or the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation in accordance with the provisions of the DGCL.

Section 2.8. Newly Created Directorships and Vacancies. Any newly created directorships and any vacancies on the Board may be filled by the affirmative votes of a majority of the remaining members of the Board, although less than a quorum. A director so elected shall hold office until the earlier of the expiration of the term of the director whom he or she has replaced, the proper election and qualification of a successor or that director's death, resignation, disqualification or removal.

Section 2.9. Quorum. At all meetings of the Board, a majority of directors constituting the Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 2.10. Actions of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee.

Section 2.11. Telephonic Meetings. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.11 shall constitute presence in person at such meeting.

Section 2.12. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation and, to the extent permitted by law, to have and exercise such authority as may be provided for in the resolutions creating such committee, as such resolutions may be amended from time to time. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at

the meeting in the place of any absent or disqualified member. Each committee shall keep regular minutes and report to the Board when required. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have the power at any time to fill vacancies in, to change the membership of or to dissolve any such committee.

Section 2.13. Compensation. The Board shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board or any committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for service as director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Directors who are full-time employees of the Corporation shall not receive any compensation for their service as director.

Section 2.14. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes the contract or transaction.

### ARTICLE III

#### OFFICERS

Section 3.1. General. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer (or, alternatively, a President), a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairperson of the Board (who must be a director), a Vice Chairperson of the Board (who must be a director), a President, a Chief Financial Officer, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers as the Board from time to time may deem appropriate. Any two or more offices may be held by the same person. The officers of the Corporation need not be stockholders of the Corporation nor, except in the

case of the Chairperson of the Board or the Vice Chairperson of the Board, directors of the Corporation.

Section 3.2. Election; Term. The Board shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board, and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the Board. Any officer may resign upon notice given in writing or electronic transmission to the Chief Executive Officer (or, if none, the President) or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event. Any vacancy occurring in any office of the Corporation shall be filled in the manner prescribed in this Article III.

Section 3.3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer (or, if none, the President) or any other officer authorized to do so by the Board, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 3.4. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision over the business of the Corporation and shall direct the affairs and policies of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 3.5. President. The President (if any) shall act in a general executive capacity and shall assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chief Executive Officer or if there be none, perform all duties of the Chief Executive Officer.

Section 3.6. Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. The Executive Vice Presidents (if any), Senior Vice Presidents (if any) and such other Vice Presidents as shall have been chosen by the Board shall have such powers and shall perform such duties as shall be assigned to them by the Board.

Section 3.7. Secretary. The Secretary shall give the requisite notice of meetings of stockholders and directors and shall record the proceedings of such meetings and, besides the Secretary's powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.8. Treasurer. The Treasurer shall have charge of the funds and securities of the Corporation and shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.9. Assistant Secretaries. Assistant Secretaries (if any) shall assist the Secretary in the discharge of the Secretary's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Secretary, shall perform the duties of the Secretary's office, subject to the control of the Board.

Section 3.10. Assistant Treasurers. Assistant Treasurers (if any) shall assist the Treasurer in the discharge of the Treasurer's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Treasurer, shall perform the duties of the Treasurer's office, subject to the control of the Board.

Section 3.8. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

#### ARTICLE IV

##### STOCK

Section 4.1. Stock Certificates. Unless otherwise provided by resolution of the Board, each class or series of shares of the Corporation's capital stock shall be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two authorized officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Uncertificated shares shall be transferable only on the books of the Corporation by the holder thereof in person or by attorney upon presentment of proper evidence of succession, assignation or authority to transfer in accordance with the customary procedures for transferring shares in uncertificated form.

Section 4.2. Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date,

which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

Section 4.3. Dividends. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

Section 4.4. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## ARTICLE V

### MISCELLANEOUS

Section 5.1. Contracts. The Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument or other document in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board. Unless otherwise fixed by the Board, the fiscal year of the Corporation shall be the calendar year.

Section 5.4. Corporate Seal. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 5.5. Offices. The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept (subject to any applicable law) outside the State of Delaware at the principal executive offices of the Corporation or at such other place or places as may be designated from time to time by the Board.

Section 5.6. Conflict with Certificate of Incorporation. These Bylaws are adopted subject to the Certificate of Incorporation. Whenever these Bylaws may conflict with the

Certificate of Incorporation, such conflict shall be resolved in favor of the Certificate of Incorporation.

Section 5.7. Execution in Counterpart and by Electronic Means. Subject to the DGCL, signatures on any notice, resolution, requisition, statement or other document required or permitted to be executed for the purposes of the DGCL may be obtained by means of facsimile or other electronic means or by execution of several documents of like form, each of which is executed by one or more persons, and such documents, when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one document for the purposes of the DGCL.

Section 5.8. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or any regular or special meeting of the Board or committee thereof need be specified in any waiver of notice of such meeting unless so required by law.

Section 5.9. Forum for Certain Actions.

(a) Forum. Unless a majority of the Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws (in each case, as may be amended from time to time), (iv) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants.

(b) Personal Jurisdiction. If any action the subject matter of which is within the scope of subparagraph (a) of this Section 5.9 is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce subparagraph (a) of this Section 5.9 (an "**Enforcement Action**") and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

(c) Enforceability. If any provision of this Section 5.9 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason

whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 5.8, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

Section 5.10. Notice to Stockholders Sharing an Address.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice permitted under this Section 5.10, shall be deemed to have consented to receiving such single written notice. This Section 5.10 shall not apply to Section 164, Section 296, Section 311, Section 312 or Section 324 of the DGCL.

Section 5.11. Notice to Person with Whom Communication is Unlawful.

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 5.12. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.



## ARTICLE VI

### AMENDMENTS

These Bylaws may be adopted, amended, altered or repealed by the Board or by the stockholders of the Corporation by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; provided, however, that, in the case of any adoption, amendment, alteration or repeal of these Bylaws by the stockholders of the Corporation, notwithstanding any other provision of these Bylaws, and in addition to any other vote that may be required by law or the terms of any series of preferred stock, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with Sections 1.3, 1.7(b), 1.11, 2.1 or 2.8 or this Article VI.

\* \* \*

Adopted as of: March 13, 2024

**EXHIBIT E-1**

**Amended OpCo CoI**

**(Exhibit D-4 to Plan Supplement)**

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**

**PROTERRA OPERATING COMPANY, INC.**

Proterra Operating Company, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”),

DOES HEREBY CERTIFY THAT:

1. The name of the Corporation is Proterra Operating Company, Inc. and that the Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on February 2, 2010 under the name Proterra Inc.

2. This Amended and Restated Certificate of Incorporation, which both restates and amends the provisions of the Certificate of Incorporation was duly approved and authorized in accordance with Sections 242, 245 and 303(a), (b) and (c) of the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered on March 6, 2024, confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Proterra Inc and its Debtor Affiliate*, March 1, 2024 (including all exhibits thereto and as amended, modified and supplemented from time to time, the “Plan”) filed in the cases commenced under title 11 of the United States Code, 11 U.S.C. §§ 101–1532, jointly administered as Case No. 23-11120 pending before the Bankruptcy Court).

3. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety so as to read as follows:

FIRST: The name of the corporation (which is hereinafter referred to as the “Corporation”) is Camber Operating Company, Inc.

SECOND: The address of the Corporation’s registered office in the State of Delaware is 850 New Burton Road, Suite 201, Dover, Kent County, Delaware 19904. The name of the Corporation’s registered agent at such address is Cogency Global Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 1,000 shares of common stock with a par value of \$0.0001 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation (the “Board”) is expressly authorized to make, alter or repeal the Bylaws of the Corporation, subject to any specific limitation on such power contained

in any Bylaws adopted by the stockholders. Elections of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

SIXTH: No director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (a) of a director or officer for any breach of the director's or officer's duty of loyalty to the Corporation or its stockholders, (b) of a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) of a director under Section 174 of the General Corporation Law of Delaware, (d) of a director or officer for any transaction from which the director or officer derived an improper personal benefit or (e) of an officer in any action by or in the right of the Corporation. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of Delaware, as so amended. Any repeal or modification of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification. For purposes of this Article Sixth, "officer" shall have the meaning provided in Section 102(b)(7) of the General Corporation Law of Delaware, as it presently exists or may hereafter be amended from time to time.

SEVENTH: Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law of Delaware as it may be in effect from time to time.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

NINTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware or the Certificate of Incorporation or bylaws of the Corporation or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

TENTH:

1. Right to Indemnification and Advancement. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "Proceeding"),

by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of any other Person or enterprise, including, without limitation, service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action or inaction in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of Delaware, as the same exists as of the date hereof or as may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide both prior to such amendment and as of the date hereof), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes of the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or trustee and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except as provided in Section 2 of this Article Tenth, the Corporation shall indemnify any such person seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article Tenth shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in connection with any such Proceeding in advance of its final disposition; *provided, however*, that, if the General Corporation Law of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article Tenth or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors, officers and trustees.

2. Right of Claimant to Bring Suit. If a claim under Section 1 of this Article Tenth is not paid in full by the Corporation within thirty days after written notice thereof has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation, and as to any such other action as to which it shall not be a defense) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is

proper in the circumstances because he or she has met the applicable standard of conduct under the General Corporation Law of Delaware, nor an actual determination by the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Indemnitor of First Resort. The Corporation acknowledges that the directors designated by the Majority Holder (as defined below) (collectively, the “Fund Directors” and each, a “Fund Director”) have certain rights to indemnification, advancement of expenses and/or insurance provided by their employers and certain of their Affiliates (collectively, the “Fund Indemnitors”). To the extent the Corporation has an indemnity obligation hereunder, the Corporation shall (a) act as the indemnitor of first resort (i.e., its obligations to the Fund Directors are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such directors are secondary), (b) be required to advance the full amount of expenses incurred by the Fund Directors and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Certificate of Incorporation of the Corporation (or any other agreement between the Corporation and a Fund Director), without regard to any rights a Fund Director may have against the Fund Indemnitors and (c) irrevocably waive, relinquish and release the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Fund Director with respect to any claim for which such director has sought indemnification from the Corporation shall affect the foregoing. The Corporation shall promptly reimburse upon demand the Fund Indemnitors making any advancement or payment on behalf of a Fund Director with respect to any such claim, and, to the extent not fully reimbursed by the Corporation, the Fund Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of such director against the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition conferred in this Article Tenth shall not be (and they shall not be deemed to be) exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the Corporation or another corporation, or of a partnership, joint venture, trust or other enterprise against any expense, liability or loss (as such terms are used in this Article Tenth), whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

6. Impairment of Existing Rights. Any repeal or modification of this Article Tenth shall not impair or otherwise affect any rights, or obligations then existing with respect to

any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

7. Construction and Presumption. This Article Tenth shall be liberally construed in favor of indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition. There shall be a rebuttable presumption that a claimant under this Article Tenth is entitled to such indemnification and the Corporation shall bear the burden of proving by a preponderance of the evidence that such claimant is not so entitled to indemnification.

8. Confidentiality. Any finding that a person asserting a claim for indemnification pursuant to this Article Tenth is not entitled to such indemnification, and any non-public information which may support such finding, shall be held in confidence to the extent permitted by law and shall not be disclosed to any third party.

9. Severability. If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to require the Corporation to indemnify and advance expenses.

#### ELEVENTH:

1. In recognition and anticipation that (a) certain directors, principals, members, officers, associated funds, employees and/or other representatives of the Majority Holder may serve as directors, officers or agents of the Corporation, (b) the Majority Holder may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article Eleventh are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Majority Holder or the Non-Employee Directors and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. None of (a) the Majority Holder or (b) any Non-Employee Director (including, with respect to any Non-Employee Director who serves as an officer of the Corporation, in both his or her director and officer capacities) or his or her Affiliates (the Persons identified in clauses (a) and (b) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 4 of this Article Eleventh. Subject to said Section 4 of this Article Eleventh, in the event that any Identified Person acquires knowledge of a potential transaction or other matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

3. The Corporation and its Affiliates do not have any rights in or to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer, client or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

4. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person in writing solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 2 of this Article Eleventh shall not apply to any such corporate opportunity.

5. In addition to and notwithstanding the foregoing provisions of this Article Eleventh, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (b) from its nature, is not in the line of the Corporation’s business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.



6. The Corporation shall not, without the prior written consent of the Majority Holder, amend, modify or revoke the provisions set forth in this Article Eleventh or any of the related definitions in Article Thirteenth at any time the Majority Holder holds any stock. Each stockholder of the Corporation hereby agrees to take all actions necessary or desirable to effect the foregoing sentence, including voting for or consenting to, or voting against or refusing to consent to, amendments to the Certificate of Incorporation (whether effected by merger, consolidation or otherwise) in order to give effect to the immediately preceding sentence. If any provision or provisions of this Article Eleventh or any of the related definitions in Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each such portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law. This Article Eleventh or any of the related definitions in Article Thirteenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the bylaws of the Corporation, applicable law, any agreement or otherwise. This Article Eleventh or any of the related definitions in Article Thirteenth supersedes any conflicting corporate policies (including, without limitation, any procedures required under any corporate policy).

7. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the corporation shall be deemed to have notice of and to have consented to the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth.

TWELFTH: The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Article Twelfth (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

THIRTEENTH: As used in this Certificate of Incorporation, the following terms shall have the following meaning:

1. “Affiliate” of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

2. “Majority Holder” means Anthelion Capital Partners LLC and its Affiliates (other than the Corporation and the Subsidiaries of the Corporation, if any) and their successors and assigns.

3. “Person” means an individual, corporation, limited liability company or partnership, association, joint stock company, trust, joint venture, unincorporated organization, the United States of America or any other nation, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, or other entity of any nature, including, without limitation, any pension, profit sharing or other benefit plan or trust.

4. “Subsidiary” means: (a) any Person of which the Corporation owns, directly or indirectly, securities having a majority of the voting power in electing the board of directors directly or through one or more subsidiaries (or, in the case of a partnership, limited liability company or other similar entity, securities conveying, directly or indirectly, a majority of the economic interests in such partnership or entity), or (b) any other Person of which the Corporation or any Subsidiary serves as general partner or managing member. The term Subsidiary shall include all Subsidiaries of such Subsidiary.

\* \* \*

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by a duly authorized officer of the Corporation, this 13<sup>th</sup> day of March 2024.

/s/ Brendan Harney

Name: Brendan Harney

Title: President

**EXHIBIT A-2**

**Blackline of Amended Distribution Trust Agreement**

**DISTRIBUTION TRUST AGREEMENT**

**Dated as of March ~~4~~<sup>13</sup>, 2024**

***Pursuant to the ~~Fourth~~<sup>Fifth</sup> Amended Joint Chapter 11 Plan of  
Reorganization for Proterra Inc  
and its Debtor Affiliate***

## DISTRIBUTION TRUST AGREEMENT

This Distribution Trust Agreement (this “**Trust Agreement**”), dated the date set forth on the signature page hereof and effective as of the Effective Date (defined below), is entered into pursuant to the ~~Fourth~~Fifth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate [Docket No. ~~1039~~1154] (as may be further amended or modified, the “**Plan**”),<sup>1</sup> in Case No. 23-11120 (BLS) in the United States Bankruptcy Court for the District of Delaware (“**Bankruptcy Court**”) by the Trustee identified on the signature pages hereof (the “**Trustee**”).

### RECITALS

**WHEREAS**, the Plan contemplates the creation of the Distribution Trust (the “**Distribution Trust**”);

**WHEREAS**, the Confirmation Order [Docket No. 1180] has been entered by the Bankruptcy Court on ~~[●]~~March 6, 2024;

**WHEREAS**, pursuant to the Plan, as of the effective date of the Plan (the “**Effective Date**”) the Distribution Trust is established to provide for distributions of the Distribution Trust Assets to the Distribution Trust Beneficiaries (as defined below) in accordance with the Plan, the Confirmation Order, and this Trust Agreement;

**WHEREAS**, the Trustee shall administer the Distribution Trust in accordance with the terms of the Plan, the Confirmation Order, and this Trust Agreement;

<sup>1</sup> All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the Plan, and such definitions are incorporated herein by reference. All capitalized terms not defined herein or in the Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the meanings ascribed to them by the Bankruptcy Code and Bankruptcy Rules, as applicable, and such definitions are also incorporated herein by reference.

**WHEREAS**, the Trustee shall conduct the Wind Down in a manner consistent with the Debtors' obligations under the Purchase Agreements and that certain Plan Support Agreement, as applicable, including, for the avoidance of doubt, the provision of any services in connection with the transition of the Debtors' operations to any Purchaser (the "**Purchaser Transition Services**") in accordance with the applicable transition services agreement (each, a "**TSA**," and collectively, the "**TSAs**"); and

**WHEREAS**, pursuant to the Plan, the Distribution Trust is intended to qualify as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Treasury Regulations or under applicable Internal Revenue Service ("**IRS**") guidelines, and a "grantor trust" for United States federal income tax purposes, pursuant to Sections 671 through 679 of the Internal Revenue Code (the "**IRC**"), with the Distribution Trust Beneficiaries treated as the grantors of the Distribution Trust, except with respect to any Disputed Ownership Fund pursuant to Section 5.3(c) hereof.

**NOW, THEREFORE**, it is hereby agreed as follows:

## **ARTICLE I**

### **AGREEMENT OF TRUST**

**1.1 Creation and Name.** There is hereby created a trust known as the "**PTRA** Distribution Trust." The Trustee of the Distribution Trust may transact the business and affairs of the Distribution Trust in the name of the Distribution Trust, and references herein to the Distribution Trust shall include for all purposes the Trustee acting on behalf of the Distribution Trust and for the benefit of the Holders of Allowed Administrative Expense Claims (other than Professional Compensation Claims),<sup>2</sup> Allowed Priority Tax Claims, Allowed Other Secured

<sup>2</sup> For the avoidance of doubt, Holders of Professional Compensation Claims shall be First Priority Distribution Trust Beneficiaries to the extent that funds held in the Professional Compensation Escrow Account are insufficient to satisfy the

Claims, and Allowed Other Priority Claims, in each case, to the extent such Claims were Disputed as of the Effective Date and not otherwise Reinstated or otherwise assumed by the Reorganized Debtors, if any, until such Claims are paid in full (collectively, the “**First Priority Distribution Trust Beneficiaries**”) and to Holders of Allowed Class 5 General Unsecured Claims (the “**Second Priority Distribution Trust Beneficiaries**,” and together with the First Priority Distribution Trust Beneficiaries, the “**Distribution Trust Beneficiaries**”). It is the intention of the Trustee that the Distribution Trust qualify as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations and that this Trust Agreement constitute the governing instrument of the Distribution Trust, except with respect to any Disputed Ownership Fund.

**1.2 Appointment of Trustee.** The Trustee is hereby appointed as the Trustee of the Distribution Trust on the Effective Date and agrees to accept and liquidate the Distribution Trust Assets in trust on behalf of, and for the benefit of, the Distribution Trust Beneficiaries subject to the terms of the Plan, the Confirmation Order, and this Trust Agreement.

**1.3 Purposes.** The purposes of the Distribution Trust are to, in each case, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purposes of the Distribution Trust, in accordance with applicable Treasury Regulations:

(a) receive the Distribution Trust Assets pursuant to the terms of the Plan and the Confirmation Order;

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Beneficiaries to the extent that funds held in the Professional Compensation Escrow Account are insufficient to satisfy the amount of accrued Professional Compensation Claims, entitling such Holders to Allowed Administrative Expense Claims for any such deficiencies in accordance with Article II.A.2 of the Plan.



(b) with the primary purpose of liquidating and distributing (as applicable) the assets transferred to it, hold, manage, protect, and, subject to Section 3.2 hereof, invest the Distribution Trust Assets, which includes any income or gain earned thereon and proceeds derived therefrom, and monetize any non-liquid Distribution Trust Assets, in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement for the benefit of the Distribution Trust Beneficiaries;

(c) administer, reconcile, dispute, object to, compromise, or otherwise resolve all Disputed Claims to determine the ultimate amount and number of Allowed Claims;

(d) make distributions to Distribution Trust Beneficiaries in accordance with the Plan, Confirmation Order, and this Trust Agreement;

(e) endeavor to make timely distributions and not unduly prolong the duration of the Distribution Trust;

(f) administer the Wind Down (including, for the avoidance of doubt, provision of the Purchaser Transition Services);

(g) abandon, liquidate, and reduce to Cash any non-Cash Distribution Trust Assets;

(h) maximize recoveries for the benefit of the Distribution Trust Beneficiaries;

(i) qualify at all times as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund;~~and~~

(j) engage in any lawful activity that is appropriate, and in furtherance of, the purposes of the Distribution Trust to the extent consistent with the Plan, the Confirmation Order this Trust Agreement, and the TSAs; and

(k) be deemed substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Distribution Trust to file motions or substitutions of parties or counsel in each such matter; provided that any actions taken pursuant to the foregoing authority shall be consistent in all respects with the Plan and any order of the Bankruptcy Court entered prior to the Effective Date.

**1.4 Transfer of Assets.** Pursuant to, and in accordance with Article IV.D of the Plan, the Distribution Trust has received, on the Effective Date, the Distribution Trust Assets to fund the Distribution Trust. The Distribution Trust Assets and any other assets to be transferred to the Distribution Trust under the Plan will be transferred to the Distribution Trust free and clear of any liens, interests, encumbrances, or other claims by the Debtors, the Reorganized Debtors, the Wind Down Debtors, any creditor, or other entity including, but not limited to, the purchasers of any of the Debtors' assets. No other entity shall have any interest, legal, beneficial or otherwise, in the Distribution Trust Assets upon the assignment and transfer of such assets to the Distribution Trust except as set forth in this Trust Agreement.

**1.5 Acceptance of Assets and Assumption of Liabilities.**

(a)\_\_\_\_ In furtherance of the purposes of the Distribution Trust, the Distribution Trust hereby expressly accepts the transfer to the Distribution Trust of the Distribution Trust Assets in the time and manner as, and subject to the terms, contemplated in the Plan and Confirmation Order.

(b) In furtherance of the purposes of the Distribution Trust, except as otherwise provided in this Trust Agreement, the Plan, or Confirmation Order, the Distribution Trust shall have and retain any and all rights and defenses the Debtors had with respect to any Disputed Claims immediately before the Effective Date to the extent necessary to administer such Claims in accordance with this Trust Agreement, the Plan, and the Confirmation Order.

(c) Notwithstanding anything to the contrary herein, no provision herein shall be construed or implemented in a manner that would cause the Distribution Trust to fail to qualify as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund.

(d) In this Trust Agreement, the words “must,” “will,” and “shall” are intended to have the same mandatory force and effect, while the word “may” is intended to be permissive rather than mandatory.

**1.6 Jurisdiction.** The Bankruptcy Court shall have continuing jurisdiction over the Distribution Trust, provided, however, that the courts of the State of Delaware, including any federal court located therein, shall also have jurisdiction over the Distribution Trust.

## ARTICLE II

### **POWERS, TRUST ADMINISTRATION, AND REPORTING**

#### **2.1 Powers.**

(a)\_\_\_\_The Trustee shall, at all times, administer the Distribution Trust in accordance with the purposes set forth in Section 1.3 above, the Plan, and the Confirmation Order. Subject to the limitations set forth in this Trust Agreement, the Plan, and the Confirmation Order, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Distribution Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law, or as otherwise specified herein, or in the Plan or the Confirmation Order, the Trustee need not obtain the order or approval of any court, including the Bankruptcy Court, in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a) above, and except as limited by the terms of this Trust Agreement, the Plan, or the Confirmation Order, the Trustee shall have the power to:

(i) receive, hold, preserve, and liquidate the Distribution Trust Assets and exercise all rights with respect thereto;

(ii) invest the monies held from time to time by the Distribution Trust in accordance with the Investment Guidelines pursuant to Section 3.2 below;

(iii) act on behalf of the Distribution Trust, including having the right to ~~effect~~take all actions and execute all agreements, instruments and other documents, and

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exercise all rights and privileges previously held by the Debtors necessary or convenient to implement the provisions of the Plan, the Confirmation Order, and this Trust Agreement;

(iv) administer, oversee, and take any and all actions necessary to effect the Wind Down (including, for the avoidance of doubt, the performance and receipt of any Purchaser Transition Services) in consultation with the Second Lien Agent as soon as reasonably practicable following the Effective Date, and, in connection therewith, the Debtors shall use commercially reasonable efforts to provide to the Distribution Trust copies of all books, records, and files of the Debtors in the Debtors' possession and control as of the Plan Effective Date, and the Distribution Trust may provide for the retention and storage of such copies until such time as the Trustee determines that retention of the same is no longer necessary or required; *provided* that, for the avoidance of doubt, the Reorganized Debtors shall be entitled to retain original copies of all books, records, and files of the Debtors as of the Effective Date;

(v) exercise any rights of the Distribution Trust under any applicable TSA, including with respect to requesting information from a Purchaser;

(vi) with respect to any Distribution Trust Assets, exercise in a manner not inconsistent with the Plan, the Confirmation Order, and this Trust Agreement, all power and authority that may be, or could have been, exercised in compliance with Revenue Procedure 94-45, commence or continue all proceedings (including any Retained Causes of Action transferred to the Distribution Trust) that may be or could have been, commenced or continued and take all actions that may be or could have been taken by any member, officer, director or shareholder of each Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including, without limitation, the

dissolution of each Wind Down Debtor (but excluding, for the avoidance of doubt, any Cause of Action that (A) has been transferred to a Purchaser or released, waived, barred or enjoined in connection with a Sale, (B) is released, waived, barred or enjoined pursuant to Article IX of the Plan, or (C) is retained by or transferred to the Reorganized Debtors in accordance with the Schedule of Retained Causes of Action);

(vii) manage, monitor, and enforce all of the Wind Down Debtors' and the Estates' rights, and interests under the Plan, the Confirmation Order, and this Trust Agreement, and other agreements of the Debtors, including the TSAs, and any other orders of the Bankruptcy Court;

(viii) establish, maintain, and adjust such operating, reserve, and trust account(s) as are necessary and appropriate to carry out the terms of this Trust Agreement, the Plan, and the Confirmation Order, including administering the Distribution Trust Expense Reserve, and to authorize and make disbursements from the Distribution Trust Expense Reserve or the Distribution Trust Assets, including disbursements necessary or appropriate in connection with the Wind Down, in each case, in accordance with the Plan and this Trust Agreement;

(ix) administer or take action in connection with the administration of the Self-Insured Reserve Account for the benefit of Holders of Health Insurance Claims, which Holders shall, for the avoidance of doubt, be beneficiaries of the Distribution Trust until paid in full;

(x) authorize and make, through the Disbursing Agent, to the extent one is retained, distributions to Holders of Allowed Claims in accordance with the Plan and the Confirmation Order, including distributions from the Professional Compensation Escrow

Account on account of Professional Compensation Claims in accordance with the Plan and the Confirmation Order, except for distributions made by the Debtors in Cash on the Effective Date pursuant to the terms of the Plan and the Confirmation Order;

(xi) authorize and make, through the Disbursing Agent, to the extent one is retained, distributions to the Distribution Trust Beneficiaries provided for or contemplated under the Plan or this Trust Agreement;

(xii) in the Trustee's sole discretion, reconcile, object to, compromise, and settle any Disputed Claims, and sue and participate, as a party or otherwise, in any judicial administrative, arbitrate or other proceeding, as required to reconcile, administer, or defend against the Disputed Claims, without supervision or approval of the Bankruptcy Court, free of any restriction of the Bankruptcy Code, the Bankruptcy Rules, and the guidelines and requirements of the U.S. Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order, or this Trust Agreement;

(xiii) make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Distribution Trust and the Trustee, including, but not limited to, those professionals previously retained by the Committee, and to pay the fees and charges incurred by the Trustee on the Distribution Trust's behalf on or after the Effective Date for professionals (including those retained by the Trustee), disbursements, expenses or related support services relating to the Distribution Trust, in each case from the Distribution Trust Expense Reserve;

(xiv) file, if necessary, any and all tax and information returns required with respect to the Distribution Trust as a grantor trust pursuant to Treasury Regulations

Section 1.671-4(a) or otherwise, make tax elections by and on behalf of the Distribution Trust, pay taxes, if any, payable by the Distribution Trust, and represent the interest and account of the Distribution Trust before any taxing authority in all matters including, without limitation, any dispute, action, suit, proceeding, or audit;

(xv) complete and file all final or otherwise required federal, state, and local tax returns for the ~~Debtors and~~ Wind Down Debtors, if any;

(xvi) take all other actions not inconsistent with the provisions of the Plan, the Confirmation Order, and this Trust Agreement that the Trustee deems reasonably necessary or desirable with respect to administering the Plan and Distribution Trust, including, but not limited to, the Wind Down, the Distribution Trust Expense Reserve, the Professional Compensation Escrow Account, and the Self-Insured Reserve Account;

(xvii) implement and/or enforce all provisions of the Plan and Confirmation Order, including entering into any agreement or executing any document required by, or consistent with, the Plan, the Confirmation Order, or this Trust Agreement;

(xviii) abandon in the reasonable business judgment of the Trustee and in any commercially reasonable manner, including through donation to a charitable organization of its choice, any Distribution Trust Asset; *provided, however*, that such charitable organization shall not have any connection to the Trustee or to the Debtors;

(xix) prosecute, dismiss, and/or settle any Retained Causes of Action assigned to the Distribution Trust, with or without approval of the Bankruptcy Court, and exercise, participate in, or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative,



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arbitrative or other nonjudicial proceeding, and pursue to settlement or judgment of such Retained Causes of Action;

(xx) purchase or create and carry all insurance policies and pay all insurance premiums and costs the Trustee deems necessary or advisable;

(xxi) collect and liquidate and/or distribute all Distribution Trust Assets pursuant to the Plan, the Confirmation Order and this Trust Agreement;

(xxii) hold any legal title to any and all of the Distribution Trust Assets;

(xxiii) if any of the Distribution Trust Assets are situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee: (A) nominate and appoint a Person duly qualified to act as trustee in each such state or jurisdiction and require from each such trustee such security as may be designated by the Trustee in his or her sole discretion; (B) confer upon such trustee all the rights, powers, privileges and duties of the Trustee hereunder, subject to the conditions and limitations of this Trust Agreement, the Plan, and the Confirmation Order, except as modified or limited by the Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws or the state or jurisdiction in which the trustee is acting shall prevail to the extent necessary); (C) require such trustee to be answerable to the Trustee for all monies, assets and other property that may be received in connection with the administration of such property; and (D) remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(xxiv) obtain and receive the proceeds or other benefits of any and all Insurance Contracts of the Debtors providing coverage with respect to Retained Causes of Action assigned to the Distribution Trust;

(xxv) undertake all administrative functions of the Chapter 11 Cases, including the payment of Statutory Fees and the ultimate closing of the Chapter 11 Cases; and

(xxvi) exercise such other powers as may be vested in or assumed by the Trustee pursuant to the Plan, this Trust Agreement, the Confirmation Order, other orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan and the Confirmation Order;

(xxvii) enter into such other arrangements with third parties as the Trustee deems useful in carrying out the purposes of the Distribution Trust, provided such arrangements do not conflict with any other provision of this Trust Agreement, the Plan, or the Confirmation Order; and

(xxviii) in accordance with Section 4.4 below, defend, indemnify, and hold harmless (and purchase insurance indemnifying) the Trust Indemnified Parties (as defined in Section 4.4 below), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless, and/or insure its directors, trustees, officers, employees, consultants, advisors, agents, representatives, and any other parties. No party shall be indemnified in any way for any liability, expense, claim, damage, or loss for which he or she is liable under Section 4.4 below.

(d) The Distribution Trust shall not have the power to guarantee any debt of other persons.

## **2.2 General Administration.**

(a)\_\_\_\_ The Trustee shall act in accordance with the Plan, the Confirmation Order, and this Trust Agreement. In the event of any inconsistency between the Plan (without reference to this Trust Agreement) and this Trust Agreement, the terms of this Trust Agreement shall control (unless stated otherwise in this Trust Agreement or in the Confirmation Order).

(b) The Trustee shall (i) timely file such tax returns and pay any taxes imposed on the Distribution Trust in accordance with Section 5.3 hereof, (ii) comply with all applicable reporting and withholding obligations in accordance with Section 5.4 hereof, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Distribution Trust as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund, and (iv) take no action that could cause the Distribution Trust to fail to qualify as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations, except with respect to any Disputed Ownership Fund.

(c) Other than the obligations of the Trustee specifically set forth in this Trust Agreement, the Plan, or the Confirmation Order, the Trustee shall have no obligations of any kind or nature with respect to his position as such.

## **2.3 Reporting.**

(a) The Trustee shall timely prepare, file and distribute such statements, reports and submissions to the extent required by applicable law.

(b) The Trustee shall file with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee, which reports shall

include a separate schedule of disbursements made by the Distribution Trust on behalf of the Debtors during the applicable period, attested to by the Trustee~~or~~, an authorized representative of the Trustee, or the Reorganized Debtor, as applicable.

(c) The Trustee, or its appointed Disbursing Agent ~~shall remit, on behalf of each Debtor, all, and the Reorganized Debtors, as applicable, shall remain obligated to pay~~ Statutory Fees, ~~from the Distribution Trust Expense Reserve to~~ to the Office of the U.S. Trustee, ~~and such obligation shall continue until such time as the applicable~~ with respect to each Debtor's Chapter 11 Case is closed in accordance with the terms set forth herein until such Chapter 11 Case has been closed, dismissed, or converted to a case under ~~chapter~~ Chapter 7 of the Bankruptcy Code; provided that, such payments shall be made by the Distribution Trust (whether from the Distribution Trust Expense Reserve or the Distribution Trust Assets) or the Reorganized Debtors; provided, further, that to the greatest extent possible, such payments shall be made by the Distribution Trust (whether from the Distribution Trust Expense Reserve or the Distribution Trust Assets) rather than the Reorganized Debtors. Unless otherwise ordered by the Bankruptcy Court, the Trustee shall maintain at all times, in the Distribution Trust Expense Reserve for the payment of Statutory Fees, a reserve of Cash in an amount no less than the greater of (i) estimated Statutory Fees to be paid prior to the closing of each Chapter 11 Case, and (ii) \$500,000 per Chapter 11 Case that has not been closed.

(d) Pursuant to Section 5.3(a) hereof, within a reasonable time following the end of the taxable year, the Trust shall send to each Distribution Trust Beneficiary a separate statement setting forth such Distribution Trust Beneficiary's items of income, gain, loss,

deduction or credit and will instruct each such Distribution Trust Beneficiary to report such items on his/her applicable income tax return.

### ARTICLE III

#### ACCOUNTS, INVESTMENTS, AND PAYMENTS

##### **3.1 Accounts.**

(a)\_\_\_\_ The Trustee shall maintain one or more accounts (the “**Trust Accounts**”) on behalf of the Distribution Trust with one or more financial depository institutions (each a “**Financial Institution**”).

(b) Candidates for the positions of Financial Institution shall fully disclose to the Trustee any interest in, or relationship with, the Reorganized Debtors or their Affiliates, if applicable. Any such interest or relationship shall not be an automatic disqualification for the position, but the Trustee shall take any such interest or relationship into account in selecting a Financial Institution.

(c) The Trustee may replace any retained Financial Institution with a successor Financial Institution at any time, and such successor shall be subject to the considerations set forth in Section 3.1(b) above.

(d) The Trustee may, from time to time, create such accounts and reasonable reserves within the Trust Accounts as authorized in this Section 3.1 and as he or she may deem necessary, prudent or useful in order to provide for distributions to the Distribution Trust Beneficiaries and may, with respect to any such account or reserve, restrict the use of money therein for a specified purpose (the “**Trust Subaccounts**”). Any such Trust Subaccounts established by the Trustee shall be held as Distribution Trust Assets, and except as specifically

designated as such in accordance with the provisions of Section 5.3(c) below, are not intended to be subject to separate entity tax treatment as a “disputed claims reserve” or a “disputed ownership fund” within the meaning of the IRC or applicable Treasury Regulations.

### **3.2 Investment Guidelines.**

(a)\_\_\_\_ The Trustee may invest the Trust Assets, provided, however, that the scope of any investment shall be limited to include only those investments permitted to be made by a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations or under applicable IRS guidelines, whether set forth in IRS rulings, revenue procedures (including Section 3.09 of Revenue Procedure 94-45), other IRS pronouncements, or otherwise.

(b) In the event the Distribution Trust holds any non-liquid assets, the Trustee shall own, protect, oversee, and monetize such non-liquid assets in accordance with the Plan, the Confirmation Order, and this Trust Agreement. This Section 3.2(b) is intended to modify the application to the Distribution Trust of the “prudent person” rule, “prudent investor” rule and any other rule of law that would require the Trustee to diversify the Distribution Trust Assets.

(c) Cash proceeds received by the Distribution Trust in connection with its monetization of the non-liquid Distribution Trust Assets shall be invested in accordance with this Section 3.2 until needed for the purposes of the Distribution Trust as set forth in Section 1.3 above.

**3.3 Payment of Operating Expenses.** All operating expenses of the Distribution Trust, including the fees and expenses of the Trustee and other professionals retained on behalf of the Distribution Trust, shall be paid from the Distribution Trust Expense Reserve, as provided in the Plan, the Confirmation Order, and this Trust Agreement. None of the Trustee, the

Distribution Trust Beneficiaries, nor any of their officers, agents, advisors, professionals or employees shall be personally liable for the payment of any operating expense or other liability of the Distribution Trust. Except as expressly set forth in the Plan, none of the Debtors, Wind Down Debtors, or Reorganized Debtors, as applicable, nor any of their officers, agents, advisors, professionals or employees shall be liable for the payment of any operating expense or other liability of the Distribution Trust or the Trustee. To the extent that the Trustee determines that the Distribution Trust Expense Reserve is likely to incur a cash shortfall prior to the termination and winding up of the Distribution Trust, the Trustee may, in ~~its~~his or her business judgment, replenish the Distribution Trust Expense Reserve from the Distribution Trust Assets. To the extent any Cash is remaining in the Distribution Trust Expense Reserve following irrevocable payment in full of all costs, fees and expenses described in this Article IV.G.1, the Trustee shall transfer such Cash to the Distribution Trust, with such excess amounts constituting Distribution Trust Assets to be distributed pursuant to the terms of the Plan, the Confirmation Order, and this Trust Agreement.

### 3.4 Distributions to Distribution Trust Beneficiaries.

(a)\_\_\_\_ The Trustee will make distributions to Distribution Trust Beneficiaries in a fair, consistent and equitable manner in accordance with this Trust Agreement, the Plan and the Confirmation Order.

(b)\_\_\_\_ With respect to Distributions for which the Trustee is the Disbursing Agent in accordance with Article VI.B of the Plan, except where the Plan requires the making of a Distribution on account of a particular Allowed Claim within a particular time, the Trustee shall have the authority to select Distribution Dates that, in the judgment of the Trustee, provide Holders of Allowed Claims with payments as quickly as reasonably practicable while limiting the costs incurred in the distribution process.

(c)\_\_\_\_ Subject to Article VI of the Plan, the Trustee shall distribute the Distribution Trust Assets or their proceeds (as applicable) to the Distribution Trust Beneficiaries on each Distribution Date in accordance with the terms and conditions of the Trust Agreement, the Plan, and the Confirmation Order, and in accordance with the following distribution waterfall:

(i)\_\_\_\_ *First*, to the Holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims, in each case, to the extent such Claims were Disputed as of the Effective Date, until such Allowed Claims are paid in full; and

(ii)\_\_\_\_ *Second*, subject to retaining Cash as set forth in Article VI.C.2 of the Plan, to the Second Priority Distribution Trust Beneficiaries.



(d)\_\_\_\_ Subject to retaining Cash as set forth in Article VI.C.2 of the Plan, the Trustee shall distribute to the Holders of Allowed Claims on account of their Distribution Trust Interests on a semi-annual basis, or with such other frequency as the Trustee determines in the exercise of its business judgment, Cash representing its net Cash income plus all net Cash proceeds from the sale of its assets (including any Cash received from the Debtors), and treating any permissible investment as Cash for purposes of this Section 3.4, less such amounts that may be reasonably necessary to:

(i)\_\_\_\_meet contingent liabilities and to maintain the value of the Distribution Trust Assets during liquidation;

(ii)\_\_\_\_pay reasonably incurred or anticipated expenses (including, without limitation, any taxes imposed on, or payable by, the Wind Down Debtors or the Distribution Trust or in respect of the Distribution Trust Assets); or

(iii)\_\_\_\_satisfy other liabilities incurred or anticipated by the Distribution Trust in accordance with the Plan, the Confirmation Order, or this Trust Agreement; *provided, however*, that the Trustee shall not be required to make a Distribution pursuant to this Section 3.4 if the Trustee determines that the expense associated with making the Distribution would likely utilize a substantial portion of the amount to be distributed, thus making the Distribution impracticable.

(e)\_\_\_\_The Trustee may be the Disbursing Agent (provided that the Trustee may hire professionals or consultants to assist with making disbursements or to act as the Disbursing Agent, and any references herein to the Trustee as the Disbursing Agent shall be deemed to apply to any such agents of the Trustee, as applicable) and shall cause all

distributions to be made to Holders of Claims after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

(f)\_\_\_The Disbursing Agent shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, the Confirmation Order, and this Trust Agreement; (ii) make all distributions contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, the Confirmation Order, and this Trust Agreement, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof and of the Plan.

(g)\_\_\_On and after the Effective Date, no Distributions to the Second Priority Distribution Trust Beneficiaries shall be made (i) prior to the Administrative Claims Bar Date, or (ii) after the Administrative Claims Bar Date which would, after giving effect to such Distributions, result in the Distribution Trust Assets being less than the Disputed Claims Reserve Amount.

(h)\_\_\_The Disbursing Agent shall remit to each First Priority Distribution Trust Beneficiary, pursuant to Article VI.C.3 of the Plan, on the first Distribution Date to occur that is at least thirty (30) days (or such fewer days as may be established by the Trustee in its sole discretion) after the date on which such First Priority Distribution Trust Beneficiary's Claim is Allowed, any Distributions to which such First Priority Distribution Trust Beneficiary would

have been entitled under this Plan on account of its Claim had such Claim been Allowed as of the Effective Date.

(i)\_\_\_Subject to Article VI.C.2 of the Plan, on each Distribution Date, the Disbursing Agent shall make Distributions of the Trust Assets to the Second Priority Distribution Trust Beneficiaries.

(j)\_\_\_With respect to Holders of Disputed Class 5 General Unsecured Claims, upon any such Disputed Class 5 General Unsecured Claim becoming an Allowed Claim, the Holder of such Allowed Claim shall be deemed to be a Second Priority Distribution Trust Beneficiary. On the first Distribution Date that is at least thirty (30) days (or such fewer days as may be established by the Trustee in its sole discretion) after the date on which a Holder of a Disputed Class 5 General Unsecured Claim becomes a Second Priority Distribution Trust Beneficiary, the Disbursing Agent shall remit to the Holder of such Allowed Claim any Distributions such Holder would have been entitled to under the Plan, the Confirmation Order, and this Trust Agreement had such Holder been a Second Priority Distribution Trust Beneficiary as of the Effective Date.

(k)\_\_\_The Distribution Trust may withhold or deduct from amounts distributable to any Person or Entity any and all amounts, determined in the Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement (including, without limitation, tax withholding in accordance with Section 5.4 below).

(l)\_\_\_With respect to any Distribution Trust Assets which are undistributable in accordance with this Section 3.4 as of the termination of the Distribution Trust: (i) such

amounts shall revert to the Distribution Trust (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary); (ii) the applicable Distribution Trust Beneficiary's claim with respect to such undistributable amounts shall be released, settled, compromised and forever barred; and (iii) the undistributable amounts shall be deemed to be Distribution Trust Assets to be distributed pursuant to the terms of the Plan, this Trust Agreement, and the Confirmation Order.

(m) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution. Notwithstanding anything to the contrary contained in the Plan, neither the Debtors, prior to the Effective Date, nor the Trustee thereafter, shall be required to distribute, and neither shall distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50, and only when such distribution is the final distribution, shall be forever barred from asserting such Claim against the Debtors, the Estates, the property of the Debtors or the Distribution Trust, or the Trustee.

(n) In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has been advised of the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date any such undeliverable distribution was

attempted to be made without further order of the Bankruptcy Court. For the avoidance of doubt, nothing contained herein shall require the Disbursing Agent to attempt to locate a new address for any such Holder. After such date, all unclaimed property or interests in property shall revert to the Distribution Trust as Distribution Trust Assets (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred without further order of the Bankruptcy Court.

(o)\_\_\_Checks issued by the Disbursing Agent on account of Allowed Claims shall be null and void if not negotiated within ninety (90) calendar days after the date of issuance thereof. Requests for reissuance of any voided check shall be made directly to the Trustee by the Distribution Trust Beneficiary to whom such check was originally issued within ninety (90) calendar days after the date of issuance. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the issuance of such check shall have its Claim for such un-negotiated check discharged and shall be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Estates without further order of the Bankruptcy Court. In such cases, any Cash held for payment on account of such Claims shall be Distribution Trust Assets, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

(p)\_\_\_Cash payments to foreign Distribution Trust Beneficiaries may be made, at the option of the Trustee, in such funds and by such means as are necessary or customary in the foreign jurisdiction of such foreign holder.

(q)\_\_\_The Trustee shall have the sole discretion to select Distribution Dates in the most efficient and cost-effective manner possible; *provided, however*, that the Trustee's discretion may not be exercised in a manner inconsistent with any express requirements of the Plan, the Confirmation Order, and this Trust Agreement; *provided, further*, that except as otherwise provided in a Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal (National Edition), on the Effective Date.

(r)\_\_\_After the Final Distribution has been made in accordance with the Plan, the Confirmation Order and this Trust Agreement, and adequate provision has been made for all final obligations of the Distribution Trust, the Trustee shall have the authority to direct the remaining Distribution Trust Assets to a tax-exempt organization as selected by the Trustee in his or her discretion.

#### ARTICLE IV

##### TRUSTEE

**4.1 Number.** There shall be one (1) Trustee who shall be the person named on the signature pages hereof.

**4.2 Terms of Service.**

(a)\_\_\_\_ The Trustee shall serve from the Effective Date until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) below, (iii) his or her removal pursuant to Section 4.2(c) below, or (iv) the termination of the Distribution Trust pursuant to Section 6.2 below.

(b) The Trustee may resign at any time upon written notice with such notice being filed with the Bankruptcy Court. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The Trustee may be removed by the Bankruptcy Court in the event the Trustee becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence or for other good cause, provided the Trustee has received reasonable notice and an opportunity to be heard prior to such removal. Other good cause shall mean (i) fraud, self-dealing, intentional misrepresentation, willful misconduct, indictment for or conviction of a felony, in each case whether or not connected to the Distribution Trust, or (ii) a consistent pattern of neglect and failure to perform or participate in performing the duties of Trustee hereunder.

(d) In the event of any vacancy in the office of the Trustee, including the death, resignation or removal of any Trustee, such vacancy shall be filled by the Bankruptcy Court.

(e) Immediately upon the appointment of any successor Trustee pursuant to Section 4.2(d) above, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the successor Trustee without any further action.

No successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee. No predecessor Trustee shall be liable personally for any act or omission of his or her successor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(f) Each successor Trustee shall serve until the earliest of (i) his or her death, (ii) his or her resignation pursuant to Section 4.2(b) above, (iii) his or her removal pursuant to Section 4.2(c) above, and (iv) the termination of the Distribution Trust pursuant to Section 6.2 below.

#### **4.3 Compensation and Expenses of the Trustee.**

(a)\_\_\_\_ The Trustee and his or her agents shall be entitled to receive reasonable compensation for services rendered on behalf of the Distribution Trust, which shall be billed at such individual's rates as further described on Exhibit A, *provided, however*, that compensation of any successor Trustee may be different from the terms provided herein and in any event shall be approved by the Bankruptcy Court prior to the retention of any subsequent Trustee. Subject to the Plan, Confirmation Order, and this Trust Agreement, the Trustee shall be employed and compensated on a monthly basis at ~~\$25,000~~ for the first 6 months of the Distribution Trust's existence, and then ~~\$18,000~~ per month going forward.

(b) The Trustee shall be compensated pursuant to the terms of this Trust Agreement. Any professionals retained by the Trustee shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred, subject to approval by the Trustee. The payment of fees and expenses of the Trustee and its professionals shall be made in the ordinary course of business from the Distribution Trust Expense Reserve and shall



not be subject to Bankruptcy Court approval. As of the Effective Date, the Distribution Trust Expense Reserve shall be \$10,000,000.

(c) The Distribution Trust will reimburse the Trustee for fees and expenses incurred prior to the Effective Date in connection with reviewing this Trust Agreement and effectuating a timely, orderly, and efficient transition of duties and obligations to the Trustee as of the Effective Date (such amount not to exceed \$~~50,000~~100,000), which shall be paid promptly after the Effective Date.

#### **4.4 Standard of Care; Exculpation.**

(a)\_\_\_\_As used herein, the term “**Trust Indemnified Party**” shall mean each of (i) the Trustee, and (ii) the officers, employees, consultants, advisors, attorneys, and agents of each of the Distribution Trust and the Trustee.

(b) To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall not have or incur any liability for actions taken or omitted in their capacities as Trust Indemnified Parties, or on behalf of the Distribution Trust, except those acts found by a final order of a court of competent jurisdiction (“**Final Order**”) to be arising out of their willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Distribution Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of, or due to, the implementation or administration of the Plan, the Confirmation Order, or this Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case except for any actions or inactions found by

Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Distribution Trust Assets.

(c) To the extent that, at law or in equity, the Trust Indemnified Parties have duties (including fiduciary duties) or liability related thereto, to the Distribution Trust or the Distribution Trust Beneficiaries, it is hereby understood and agreed by the Parties that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Trust Agreement with respect to the Trust Indemnified Parties; *provided, however*, that with respect to the Trust Indemnified Parties the duties of care and loyalty are not eliminated but are limited and subject to the terms of this Trust Agreement, including but not limited to this Section 4.4 and its subparts.

(d) The Distribution Trust will maintain appropriate insurance coverage for the protection of the Trust Indemnified Parties, as determined by the Trustee in his or her discretion.

#### **4.5 Protective Provisions.**

(a)\_\_\_\_Every provision of this Trust Agreement relating to the conduct or affecting the liability of, or affording protection to, Trust Indemnified Parties shall be subject to the provisions of this Section 4.5.

(b) In the event the Trustee retains counsel (including at the expense of the Distribution Trust), the Trustee shall be afforded the benefit of the attorney-client privilege with respect to all communications with such counsel, and in no event shall the Trustee be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege

even if the communications with counsel had the effect of guiding the Trustee in the performance of duties hereunder. Any successor Trustee shall succeed to, and hold the same respective rights and benefits of, the predecessor for purposes of privilege, including the attorney-client privilege. No Party or other person may raise any exception to the attorney-client privilege described herein as any such exceptions are hereby waived by all Parties.

(c) No Trust Indemnified Party shall be personally liable under any circumstances, except for his or her own willful misconduct, bad faith, gross negligence or fraud as determined by a Final Order.

(d) No provision of this Trust Agreement shall require the Trust Indemnified Parties to expend or risk their own personal funds, or otherwise incur financial liability in the performance of their rights, duties and powers hereunder.

(e) In the exercise or administration of the Distribution Trust, the Trust Indemnified Parties (i) may act directly or through their respective agents, advisors, or attorneys pursuant to agreements entered into with any of them, and the Trust Indemnified Parties shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys have been selected by the Trust Indemnified Parties in good faith and with due care, and (ii) may consult with counsel, accountants and other professionals to be selected by them in good faith and with due care and employed by them, and shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other professionals.

#### **4.6 Indemnification.**

(a)\_\_\_\_To the maximum extent permitted by applicable law, the Trust Indemnified Parties shall be entitled to indemnification and reimbursement for reasonable fees and expenses (including attorneys' fees and costs, but excluding taxes in the nature of income taxes imposed on compensation paid to the Trust Indemnified Parties) in defending any and all of their actions or inactions in their capacity as Trust Indemnified Parties, or on behalf of the Distribution Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of, or due to the implementation or administration of the Plan or the Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case, except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Trust Indemnified Parties shall be satisfied from the Distribution Trust Assets.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of the Trust Indemnified Parties in connection with any action, suit or proceeding, whether civil, administrative or arbitrative, from which they are indemnified by the Distribution Trust shall be paid by the Distribution Trust from the Distribution Trust Expense Reserve (or the Distribution Trust Assets, if such reserve is insufficient) in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trust Indemnified Parties, to repay such amount in the event that it shall be determined ultimately by Final Order that the Trust Indemnified Parties or any other potential indemnitee are not entitled to be indemnified by the Distribution Trust. The Trustee may, in his or her discretion, authorize an advance of reasonable expenses, costs and fees (including attorneys' fees and costs) to be incurred by or on behalf of the Trust Indemnified Parties, as set forth herein.

(c) The Trustee is authorized, but not required, to purchase and maintain appropriate amounts and types of insurance on behalf of the Trust Indemnified Parties, as determined by the Trustee, in his or her sole discretion, which may include insurance with respect to liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Trust Indemnified Party, and/or as an employee, agent, lawyer, advisor or consultant of any such person.

(d) The indemnification provisions of this Trust Agreement with respect to any Trust Indemnified Party shall survive the termination of such Trust Indemnified Party from the capacity for which such Trust Indemnified Party is indemnified. Modification of this Trust Agreement shall not affect any indemnification rights or obligations in existence at such time. In making a determination with respect to entitlement to indemnification of any Trust Indemnified Party hereunder, the person, persons or entity making such determination shall presume that such Trust Indemnified Party is entitled to indemnification under this Trust Agreement, and any person seeking to overcome such presumption shall have the burden of proof to overcome the presumption.

(e) The rights to indemnification hereunder are not exclusive of other rights which any Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution.

**4.7 Trustee Independence.** The Trustee shall not, during the term of his or her service, hold a financial interest in, act as attorney or agent for, or serve as an officer or as any other professional for the Reorganized Debtors or any of the purchasers of the Debtors' assets.

The Trustee shall also not act as an attorney, agent, or other professional for any Distribution Trust Beneficiary.

**4.8      No Bond.** The Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court or the Trustee decides, in his or her sole discretion, that such bond is in the best interests of the Distribution Trust.

**4.9      Burden of Proof.** In any proceeding brought by any of the Debtors, or any other person who is bound by this Trust Agreement challenging any action, determination or failure to act of the Trustee in discharge of his or her duties under this Trust Agreement on the basis that such action, determination or failure constitutes gross negligence, willful misconduct or fraud, the person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act constituted gross negligence, willful misconduct, or fraud. Notwithstanding anything to the contrary in this Trust Agreement or any duty otherwise existing at law or equity, each determination, action or failure to act of the Trustee in the discharge of his or her duties under this Trust Agreement is, to the extent consistent with this Trust Agreement, hereby deemed to not constitute a breach of this Trust Agreement or any duty hereunder or existing at law, in equity or otherwise.

**4.10      Reliance by the Trustee.** The Trustee may absolutely rely, and shall be fully protected in acting or refraining from acting if he or she relies upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that he or she has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile or e-mail transmissions, to have been sent other than by the proper party or parties, in each case without

obligation to satisfy his or herself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt. In the absence of gross negligence, willful misconduct, or fraud in respect of the Trustee's duties as found by a Final Order, or material breach of this Trust Agreement, the Trustee may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting (or, if applicable, not acting) thereon. The Trustee shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning this Trust Agreement, the Plan, the Confirmation Order, or any other document executed in connection therewith, and the Trustee shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon.

**4.11 Books and Records.** The Trustee shall be free, in his or her discretion to abandon, destroy or otherwise dispose of any books and records or copies thereof in his possession that the Trustee deems not necessary for the continued administration of the Plan, the Confirmation Order, and Distribution Trust and not required to be retained under applicable law, without the need for any order of the Bankruptcy Court, and shall have no liability for same. This notice provision shall not create any right by any third party to access to privileged or confidential information held by the Distribution Trust.

**4.12 Privilege.**

(a) Subject to the terms of the Plan and the Confirmation Order, all of the Debtors' privileges (the "**Privileges**"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "**Transferred Privileges**"), shall be transferred, assigned and delivered to the

Distribution Trust, without waiver, limitation or release, and shall vest with the Distribution Trust on the Effective Date and be jointly held by the Reorganized Debtors and the Distribution Trust on and after the Effective Date; *provided, however*, that notwithstanding the foregoing, Transferred Privileges do not include Privileges relating in any way to any rights, claims, or Causes of Action sold to any Purchaser or released under the Plan.

(b) Notwithstanding anything herein to the contrary, the Distribution Trust and the Reorganized Debtors shall each hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Distribution Trust.

(c) The Trustee shall have until two (2) years after the Effective Date to request documents or information subject to the Transferred Privileges (each an “**Information Request**”); *provided, however*, that with respect to any action involving Transferred Privileges filed on or before two (2) years after the Effective Date, the Trustee may make an Information Request subject to the Transferred Privileges involved in such action until the final resolution of such action, including any appeals.



## ARTICLE V

### TAX MATTERS

**5.1 Treatment of Trust Assets Transfer.** For all United States federal income tax purposes (and, to the extent permitted, for state and local income tax purposes), all Parties shall treat the transfer of the Distribution Trust Assets to the Distribution Trust as (a) a transfer of the Distribution Trust Assets (subject to any obligations related to those assets) directly to the Distribution Trust Beneficiaries, followed by (b) the transfer by such Distribution Trust Beneficiaries of such Distribution Trust Assets to the Distribution Trust in exchange for Distribution Trust Interests (other than the Distribution Trust Assets allocable to Disputed Claims and held as a “disputed ownership fund” within the meaning of Section 1.468B-9 of the Treasury Regulations (“**Disputed Ownership Fund**”)). Accordingly, the Distribution Trust Beneficiaries shall be treated for United States federal income tax purposes (and, to the extent permitted, for state and local income tax purposes) as the grantors within the meaning of Section 677 of the IRC and deemed owners of their respective shares of the Distribution Trust Assets (other than the Distribution Trust Assets allocable to the Disputed Ownership Fund).

**5.2 Income Tax Status.**

(a)\_\_\_\_For United States federal income tax purposes (and for purposes of all state, local and other jurisdictions to the extent applicable) and other than as provided pursuant to Section 5.3(c) hereof, this Distribution Trust shall be treated as a liquidating trust pursuant to Section 301.7701-4(d) of the Treasury Regulations and as a grantor trust pursuant to Sections 671 through 679 of the IRC. To the extent consistent with Revenue Procedure 94-45 and not otherwise inconsistent with this Trust Agreement, this Trust Agreement shall be construed so as to satisfy the requirements for liquidating trust status.

(b)\_\_\_\_The Distribution Trust shall at all times to be administered so as to constitute a domestic trust for United States federal income tax purposes.

### **5.3    Tax Returns.**

(a) In accordance with Section 6012 of the IRC and Section 1.671-4(a) of the Treasury Regulations, the Trustee shall file with the IRS annual tax returns for the Distribution Trust on Form 1041 as a grantor trust pursuant to Section 1.671-4(a) of the Treasury Regulations. In addition, the Trustee shall file in a timely manner for the Distribution Trust such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. The Distribution Trust's items of taxable income, gain, loss, deduction, and/or credit (other than such items in respect of any assets allocable to, or retained on account of, the Disputed Ownership Fund) will be allocated to the Distribution Trust Beneficiaries in accordance with their relative ownership of Distribution Trust Interests. Within a reasonable time following the end of the taxable year, the Distribution Trust shall send to each Distribution Trust Beneficiary a separate statement setting forth such Distribution Trust Beneficiary's items of income, gain, loss, deduction or credit and will instruct each such Distribution Trust Beneficiary to report such items on his/her applicable income tax return.

(b) The Distribution Trust shall be responsible for payment, from the Distribution Trust Expense Reserve or the Distribution Trust Assets, of any taxes imposed on the Distribution Trust (including any taxes imposed on the Disputed Ownership Fund) or the Distribution Trust Assets. In accordance therewith, any taxes imposed on the Disputed Ownership Fund or its assets will be paid from the Distribution Trust Expense Reserve or the Distribution Trust Assets.

(c) The Trustee may timely elect to treat any Distribution Trust Assets allocable to Disputed Claims as a Disputed Ownership Fund pursuant to Section 1.468B-9(c)(2)(ii) of the Treasury Regulations, and to the extent permitted by applicable law,

shall report consistently for state and local income tax purposes. If such a Disputed Ownership Fund election is made, all parties (including the Trustee and the holders of Distribution Trust Interests) shall report for U.S. federal, state and local income tax purposes consistent with the foregoing. The Distribution Trust shall file all income tax returns with respect to any income attributable to the Disputed Ownership Fund and shall pay from the Distribution Trust Expense Reserve or the Distribution Trust Assets, consistent with Article IV.D.11(b) of the Plan, all U.S. federal, state and local income taxes attributable to such Disputed Ownership Fund based on the items of income, deduction, credit, or loss allocable thereto.

**5.4 Withholding of Taxes and Reporting Related to Distribution Trust Operations.** The Distribution Trust shall comply with all withholding, deduction and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Distribution Trust shall be subject to any applicable withholding, deduction and reporting requirements. The Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with any such withholding, deduction, payment, and reporting requirements. All amounts properly withheld or deducted from distributions to a Distribution Trust Beneficiary as required by applicable law and paid over to the applicable taxing authority for the account of such Distribution Trust Beneficiary shall be treated as part of the Distribution Trust Distribution to such Distribution Trust Beneficiary. To the extent that the operation of the Distribution Trust or the liquidation of the Distribution Trust Assets creates a tax liability imposed on the Distribution Trust, the Distribution Trust shall timely pay such tax liability and any such payment shall be considered a cost and expense of the operation of the Distribution Trust payable without Bankruptcy Court order. Any federal, state or local

withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Distribution Trust Beneficiaries shall be required to provide any information necessary to effect the withholding and reporting of such taxes. The Trustee may require each Distribution Trust Beneficiary to furnish to the Distribution Trust (or its designee) its social security number, or employer or taxpayer identification number as assigned by the IRS, and complete any related documentation (including but not limited to a Form W-8BEN, Form W-8BEN-E, or Form W-9, as applicable) (the “**Tax Documents**”). The Trustee may condition any and all distributions to any Distribution Trust Beneficiary upon the timely receipt of properly executed Tax Documents and receipt of such other documents as the Trustee reasonably requests, and in accordance with the Plan and Confirmation Order. If the Distribution Trust Beneficiary fails to complete and return to the Trustee (or Disbursing Agent, as applicable) the appropriate Tax Documents within one hundred one hundred and eighty (180) days of the request by the Trustee (or Disbursing Agent, as applicable), then such Holder shall have its Claim forfeited and shall be forever barred, estopped, and enjoined from asserting any such Claim against the Estates. In such cases, any Cash held for payment on account of such Claims shall be treated as Distribution Trust Assets, free of any Claims of such Holder with respect thereto.

**5.5      Valuation.** As soon as possible after the Effective Date, the Trustee shall make a good faith valuation of the Distribution Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties for all United States federal and applicable state and local income tax purposes. The Trustee shall also file (or cause

to be filed) any other statements, returns or disclosures relating to the Distribution Trust that are required by any governmental unit for taxing purposes.

**5.6 Expedited Determination of Taxes.** The Trustee may request an expedited determination of taxes of the Distribution Trust, under Section 505 of the Bankruptcy Code for all returns filed for, or on behalf of, the Distribution Trust for all taxable periods through the termination of the Distribution Trust.

## ARTICLE VI

### GENERAL PROVISIONS

**6.1 Irrevocability.** To the fullest extent permitted by applicable law, the Distribution Trust is irrevocable.

**6.2 Term; Termination.**

(a)\_\_\_\_ The term for which the Distribution Trust exists shall commence on the Effective Date and shall terminate pursuant to the provisions of this Section 6.2.

(b) The Trustee shall make continuing efforts to monetize any non-liquid Distribution Trust Assets.

(c) The Trustee and the Distribution Trust shall be discharged or dissolved, as the case may be, at such time that is reasonable based on all the facts and circumstances as (i) the Trustee determines that the pursuit of additional Retained Causes of Actions is not likely to yield sufficient additional Cash to justify further pursuit of such Causes of Action, or (ii) all distributions of Cash and other Distribution Trust Assets required to be made by the Trustee under the Plan, the Confirmation Order, and this Trust Agreement have been made in accordance with provisions of the Plan, the Confirmation Order, and this Trust Agreement, *provided*,

*however*, that in no event shall the Distribution Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made prior to the fifth (5th) anniversary without the need for a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Distribution Trust as a liquidating trust for federal income tax purposes, determines that a fixed period extension, not to exceed five (5) years, is necessary to facilitate or complete the recovery on and liquidation of the Distribution Trust Assets. Any extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term.

(d) The Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases, *provided* that, ~~as of the Effective Date, the Trustee may submit separate orders to the Bankruptcy Court under certification of counsel previously provided to the U.S. Trustee closing certain individual Chapter 11 Cases and/or changing the name(s) of any remaining Debtor(s) and the case caption of any remaining open Chapter 11 Case as desired, provided further that~~ matters concerning Claims may be heard and adjudicated in one of the Debtors' Chapter 11 Cases that remains open regardless of whether the applicable Claim is against a Debtor in a Chapter 11 Case that is closed. Upon the filing of a motion to close the last Chapter 11 Case remaining open, the Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c) as set forth in ~~Error! Reference source not found.~~ Article IV.I of the Plan.

**6.3 Amendments.** Any amendment to, or modification of, this Trust Agreement may be made in writing and only pursuant to an order of the Bankruptcy Court; *provided*,

*however*, the Trustee may amend this Trust Agreement from time to time without the consent, approval or other authorization of, but with notice to, the Bankruptcy Court, to make: (a) minor modifications or clarifying amendments necessary to enable the Trustee to effectuate the provisions of this Trust Agreement; or (b) modifications to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or foreign governmental entity. Notwithstanding the foregoing, no amendment or modification of this Trust Agreement shall modify this Trust Agreement in a manner that is inconsistent with the Plan or the Confirmation Order other than to make minor modifications or clarifying amendments as necessary to enable the Trustee to effectuate the provisions of this Trust Agreement. Notwithstanding the foregoing, neither this Trust Agreement, nor any Exhibit to this Trust Agreement, shall be modified or amended in any way that could jeopardize, impair, or modify the Distribution Trust's "liquidating trust" status.

**6.4      Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

**6.5      Notices.**

(a)\_\_\_\_Notices to Distribution Trust Beneficiaries shall be given in accordance with such address for each such Holder as indicated on the Debtors' records as of the date of any such distribution pursuant to the procedures set forth in Section ~~3.4~~3.4(m) of this Trust Agreement.

(b)      Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or e-mail addresses



designated below, or to such other addresses or e-mail addresses as may hereafter be furnished in writing to each of the other Parties listed below in compliance with the terms hereof.

To the Distribution Trust:

Steven Balasiano  
MHR Advisory Group, LLC  
~~6701 Bay Parkway, 3rd Floor~~  
~~Brooklyn, NY 11204~~  
c/o Province, LLC  
1111 Santa Monica Blvd, Ste. 525  
Los Angeles, CA 90025  
Telephone: (347) 832-5595  
Email: [steven@mhradvisory.com](mailto:steven@mhradvisory.com)

With a copy (which shall not constitute notice) to Counsel to the Distribution Trustee:

~~☛~~ Lowenstein Sandler LLP  
Jeffrey L. Cohen, Esq.  
Eric Chafetz, Esq.  
Jordana Renert, Esq.  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 262-6700  
Email: [jcohen@lowenstein.com](mailto:jcohen@lowenstein.com)  
Email: [echafetz@lowenstein.com](mailto:echafetz@lowenstein.com)  
Email: [jrenert@lowenstein.com](mailto:jrenert@lowenstein.com)

To the Reorganized Debtors:

Camber Operating Company, Inc  
~~☛~~ Ewa Kozicz  
Michelle Barone  
3350 Virginia Street, 2nd Floor  
Miami, FL 33133  
Telephone: (212) 339-1903  
Email: [michelle@anthelioncap.com](mailto:michelle@anthelioncap.com)  
Email: [ewa@anthelioncap.com](mailto:ewa@anthelioncap.com)

With a copy (which shall not constitute notice) to:

~~☛~~ John Butler  
Sidley Austin LLP

[787 7th Avenue](#)  
[New York, NY 10019](#)  
[Telephone: \(212\) 839-5300](#)  
[Email: \[john.butler@sidley.com\]\(mailto:john.butler@sidley.com\)](#)

(c) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses.

**6.6 Successors and Assigns.** The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Distribution Trust, the Trustee, and their respective successors and assigns, except that neither the Distribution Trust, nor the Trustee, may assign or otherwise transfer any of their rights or obligations, if any, under this Trust Agreement except in accordance with Section 4.2(d) above.

**6.7 Limitation on Distribution Trust Interests for Securities Law Purposes.** Distribution Trust Interests (a) shall not be assigned, conveyed, hypothecated, pledged, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will, under the laws of descent and distribution or otherwise by operation of law; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest.

**6.8 Exemption from Registration.** The Parties hereto intend that the interests of the Distribution Trust Beneficiaries under this Trust Agreement shall not be “securities” under applicable laws, but none of the Parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If it should be determined that any such interests constitute “securities,” the Parties hereto intend that

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the exemption provisions of Section 1145 of the Bankruptcy Code will be satisfied and the offer and sale under the Plan of the Distribution Trust Interests will be exempt from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations or that the issuance of such interests shall be exempt from the registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act, regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations.

**6.9      Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein, and in the documents referred to herein (including the Plan and the Confirmation Order), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

**6.10      Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

**6.11      Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the

rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; *provided, however*, that the Parties hereto intend that the provisions hereof shall control and there shall not be applicable to the Distribution Trust, the Trustee, or this Trust Agreement, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to, or regulate in, a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges; (b) affirmative requirements to post bonds for the Trustee, officers, agents, or employees of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (d) fees or other sums payable to the Trustee, officers, agents, or employees of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of Distribution Trust Assets; (g) the existence of rights or interests (beneficial or otherwise) in Distribution Trust Assets; (h) the ability of beneficial owners or other persons to terminate or dissolve the Distribution Trust; or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustee or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Trustee set forth or referenced in this Trust Agreement.

**6.12      Effectiveness.** This Trust Agreement shall become effective on the Effective Date.

**6.13** ~~Counterpart Signatures.~~ This Trust Agreement may be executed in any number of counterparts and by different Parties on separate counterparts (including by PDF transmitted by e-mail), and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the ~~Parties have~~ Trustee has executed this Trust Agreement this 12th day of March, 2024.

TRUSTEE

[●]  
Steven Balasiano, not individually but  
solely in his capacity as Distribution  
Trustee of the PTR Distribution Trust

**EXHIBIT B-2**

**Blackline of Amended TopCo Bylaws**

**AMENDED AND RESTATED BYLAWS  
OF**

~~PROTERRA~~**PRODIGY INVESTMENTS HOLDINGS, INC<sup>†</sup>**

(hereinafter called the “**Corporation**”)

**Article I**

**MEETINGS OF STOCKHOLDERS**

Section 1.1. Place of Meetings. Meetings of the stockholders of the Corporation for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors of the Corporation (the “**Board**”). The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communications as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”).

Section 1.2. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly be brought before the meeting in accordance with these amended and restated bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof, these “**Bylaws**”) shall be held on such date and at such time as shall be designated from time to time by the Board. The Chairperson of the Board, the Chief Executive Officer or the Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

Section 1.3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation (including the terms of any certificate of designation with respect to any series of preferred stock), as amended and restated from time to time (the “**Certificate of Incorporation**”), special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by the Chairperson of the Board, the Chief Executive Officer or the Board or a majority of stockholders. If any person(s) other than the Board calls a special meeting, the request shall (a) be in writing, (b) specify the general nature of the business proposed to be transacted and (c) be delivered personally or sent by registered mail, return receipt requested, or by facsimile transmission to the Chairperson of the Board, Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) or Secretary. The officer of the Company receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the place, if any, and hour determined by the Board, which shall not be fewer than 30 nor more than 120 days after the date of receipt of the request. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of

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<sup>†</sup> ~~NTD: To be updated to reflect revised entity name.~~

meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously called by any of them.

Section 1.4. Notice. Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law or the Certificate of Incorporation, written notice of any meeting shall be given either personally, by mail or by electronic transmission (if permitted under the circumstances by the DGCL) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the stock transfer books of the Corporation. If notice is given by means of electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any stockholder may waive notice of any meeting before or after the meeting. The attendance of a stockholder at any meeting shall constitute a waiver of notice at such meeting, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders need be specified in any waiver of notice unless so required by law.

Section 1.5. Adjournments. Any meeting of stockholders of the Corporation may be adjourned or recessed from time to time to reconvene at the same or some other place, if any, by holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, though less than a quorum, or by any officer entitled to preside at or to act as secretary of such meeting, and notice need not be given of any such adjourned or recessed meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or recessed meeting, are (a) announced at the meeting at which the adjournment or recess is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned or recessed meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, notice of the adjourned meeting in accordance with the requirements of Section 1.4 of these Bylaws shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned



meeting and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to such vote. If a quorum shall not be present or represented at any meeting of stockholders, the chairperson of the meeting, any officer entitled to preside at or to act as secretary of such meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 1.5 of these Bylaws, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7. Voting.

(a) Matters Other Than Election of Directors. Any matter brought before any meeting of stockholders of the Corporation, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the Corporation's capital stock present in person or represented by proxy at the meeting and entitled to vote on such matter, voting as a single class, unless the matter is one upon which, by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Except as provided in the Certificate of Incorporation, every stockholder having the right to vote shall have one vote for each share of stock having voting power registered in such stockholder's name on the books of the Corporation. Such votes may be cast in person or by proxy as provided in Section 1.10 of these Bylaws. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Election of Directors. Except as provided in Section 2.8 of these Bylaws, election of directors at all meetings of the stockholders at which directors are to be elected shall be by a plurality of the votes cast.

Section 1.8. Voting of Stock of Certain Holders. Shares of stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting. A stockholder whose shares of stock of the Corporation are pledged shall be entitled to vote such shares, unless on the transfer records of the Corporation such stockholder has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or the pledgee's proxy, may vote such shares.

Section 1.9. Treasury Stock. Shares of stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of

directors of which are held by the Corporation, shall not be voted at any meeting of stockholders of the Corporation and shall not be counted in the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this Section 1.9 shall limit the right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 1.10. Proxies. Each stockholder entitled to vote at a meeting of stockholders of the Corporation may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Section 1.11. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

Section 1.12. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make or have prepared and made, at least ten (10) days before every meeting of stockholders of the Corporation, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 1.12 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 1.13. Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If

no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.13 at the adjourned meeting.

Section 1.14. Organization and Conduct of Meetings. The Chairperson of the Board shall act as chairperson of meetings of stockholders of the Corporation (the “**Chairperson of the Meeting**”). The Board may designate any other director or officer of the Corporation to act as Chairperson of the Meeting in the absence of the Chairperson of the Board, and the Board may further provide for determining who shall act as Chairperson of the Meeting in the absence of the Chairperson of the Board and such designee. If the Chairperson of the Board is absent and the Board has not designated a replacement for Chairperson of the Meeting, the Vice Chairperson of the Board, if any, or in the absence of the foregoing person, the Chief Executive Officer, if any, or in the absence of the foregoing person, a Vice President of the Company, if any, or in the absence of the foregoing person, the Secretary, or in the absence of the foregoing person, a chairperson chosen at such meeting by the holders of a majority of the shares present or represented at such meeting, shall serve as the Chairperson of the Meeting. The Board may adopt by resolution such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants. Except to the extent inconsistent with the rules and regulations as adopted by the Board, the Chairperson of the Meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairperson of the Meeting, are appropriate for the proper conduct of the meeting. Except to the extent determined by the Board or the Chairperson of the Meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary, or in the Secretary’s absence an Assistant Secretary, shall act as secretary of the meeting of stockholders, but if neither the Secretary nor an Assistant Secretary is present, the Chairperson of the Meeting shall appoint any person present to act as secretary of the meeting.

## Article II

### DIRECTORS

Section 2.1. Number; Term. The Board shall consist of one or more members. Unless the Certificate of Incorporation fixes the number of directors, the number of directors shall be fixed, from time to time, exclusively by the Board, subject to any limitations in any stockholder agreement or the rights of the holders of preferred stock with respect to the election of directors, if any. Each director shall hold office until a successor is duly elected and qualified or until the director's death, resignation, disqualification or removal.

Section 2.2. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 2.3. Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairperson of the Board (if there be one), the Chief Executive Officer or the Board and shall be held at such place, on such date and at such time as he, she or it shall specify.

Section 2.4. Notice. Notice of any meeting of the Board stating the place, date and time of the meeting shall be given to each director by mail posted not less than five (5) days before the date of the meeting, by nationally recognized overnight courier deposited not less than two (2) days before the date of the meeting or by email, facsimile or other means of electronic communication delivered or sent not less than twenty-four (24) hours before the date and time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. If mailed or sent by overnight courier, such notice shall be deemed to be given at the time when it is deposited in the United States mail with first class postage prepaid or deposited with the overnight courier. Notice by facsimile or other electronic transmission shall be deemed given when the notice is transmitted. Any director may waive notice of any meeting before or after the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where the director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting unless so required by law.

Section 2.5. Chairperson of the Board. The Chairperson of the Board shall be chosen from among the directors and may be the Chief Executive Officer. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairperson of the Board shall preside at all meetings of stockholders and of the Board. The Chairperson of the Board shall have such other powers and duties as may from time to time be assigned by the Board.

Section 2.6. Organization. At each meeting of the Board, the Chairperson of the Board, or, in the Chairperson's absence, a director chosen by a majority of the directors present, shall act as chairperson. The Secretary shall act as secretary at each meeting of the Board. In case the

Secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all assistant secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.7. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Subject to any limitations in any stockholder agreement or the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation in accordance with the provisions of the DGCL.

Section 2.8. Newly Created Directorships and Vacancies. Any newly created directorships and any vacancies on the Board may be filled by the affirmative votes of a majority of the remaining members of the Board, although less than a quorum. A director so elected shall hold office until the earlier of the expiration of the term of the director whom he or she has replaced, the proper election and qualification of a successor or that director's death, resignation, disqualification or removal.

Section 2.9. Quorum. At all meetings of the Board, a majority of directors constituting the Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 2.10. Actions of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee.

Section 2.11. Telephonic Meetings. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.11 shall constitute presence in person at such meeting.

Section 2.12. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation and, to the extent permitted by law, to have and exercise such authority as may be provided for in the resolutions creating such committee, as such resolutions may be amended from time to time. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members



thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any absent or disqualified member. Each committee shall keep regular minutes and report to the Board when required. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have the power at any time to fill vacancies in, to change the membership of or to dissolve any such committee.

Section 2.13. Compensation. The Board shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board or any committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for service as director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Directors who are full-time employees of the Corporation shall not receive any compensation for their service as director.

Section 2.14. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes the contract or transaction.

### Article III

#### OFFICERS

Section 3.1. General. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer (or, alternatively, a President), a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairperson of the Board (who must be a director), a Vice Chairperson of the Board (who must be a director), a President, a Chief Financial Officer, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers as the Board from time to time may deem appropriate. Any two or more offices may be held by the same person.

The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairperson of the Board or the Vice Chairperson of the Board, directors of the Corporation.

Section 3.2. Election; Term. The Board shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board, and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the Board. Any officer may resign upon notice given in writing or electronic transmission to the Chief Executive Officer (or, if none, the President) or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event. Any vacancy occurring in any office of the Corporation shall be filled in the manner prescribed in this Article III.

Section 3.3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer (or, if none, the President) or any other officer authorized to do so by the Board, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 3.4. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision over the business of the Corporation and shall direct the affairs and policies of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 3.5. President. The President (if any) shall act in a general executive capacity and shall assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chief Executive Officer or if there be none, perform all duties of the Chief Executive Officer.

Section 3.6. Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. The Executive Vice Presidents (if any), Senior Vice Presidents (if any) and such other Vice Presidents as shall have been chosen by the Board shall have such powers and shall perform such duties as shall be assigned to them by the Board.

Section 3.7. Secretary. The Secretary shall give the requisite notice of meetings of stockholders and directors and shall record the proceedings of such meetings and, besides the

Secretary's powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.8. Treasurer. The Treasurer shall have charge of the funds and securities of the Corporation and shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.9. Assistant Secretaries. Assistant Secretaries (if any) shall assist the Secretary in the discharge of the Secretary's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Secretary, shall perform the duties of the Secretary's office, subject to the control of the Board.

Section 3.10. Assistant Treasurers. Assistant Treasurers (if any) shall assist the Treasurer in the discharge of the Treasurer's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Treasurer, shall perform the duties of the Treasurer's office, subject to the control of the Board.

Section 3.8. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## Article IV

### STOCK

Section 4.1. Stock Certificates. Unless otherwise provided by resolution of the Board, each class or series of shares of the Corporation's capital stock shall be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two authorized officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Uncertificated shares shall be transferable only on the books of the Corporation by the holder thereof in person or by attorney upon presentment of proper evidence of succession, assignation or authority to transfer in accordance with the customary procedures for transferring shares in uncertificated form.

Section 4.2. Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the



stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

Section 4.3. Dividends. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

Section 4.4. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## Article V

### MISCELLANEOUS

Section 5.1. Contracts. The Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument or other document in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board. Unless otherwise fixed by the Board, the fiscal year of the Corporation shall be the calendar year.

Section 5.4. Corporate Seal. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 5.5. Offices. The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept (subject to any applicable law) outside the State of Delaware at the principal executive offices of the Corporation or at such other place or places as may be designated from time to time by the Board.

Section 5.6. Conflict with Certificate of Incorporation. These Bylaws are adopted subject to the Certificate of Incorporation. Whenever these Bylaws may conflict with the Certificate of Incorporation, such conflict shall be resolved in favor of the Certificate of Incorporation.

Section 5.7. Execution in Counterpart and by Electronic Means. Subject to the DGCL, signatures on any notice, resolution, requisition, statement or other document required or permitted to be executed for the purposes of the DGCL may be obtained by means of facsimile or other electronic means or by execution of several documents of like form, each of which is executed by one or more persons, and such documents, when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one document for the purposes of the DGCL.

Section 5.8. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or any regular or special meeting of the Board or committee thereof need be specified in any waiver of notice of such meeting unless so required by law.

Section 5.9. Forum for Certain Actions.

(a) Forum. Unless a majority of the Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws (in each case, as may be amended from time to time), (iv) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants.

(b) Personal Jurisdiction. If any action the subject matter of which is within the scope of subparagraph (a) of this Section 5.9 is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce subparagraph (a) of this Section 5.9 (an "**Enforcement Action**") and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

(c) Enforceability. If any provision of this Section 5.9 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 5.8, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

Section 5.10. Notice to Stockholders Sharing an Address.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice permitted under this Section 5.10, shall be deemed to have consented to receiving such single written notice. This Section 5.10 shall not apply to Section 164, Section 296, Section 311, Section 312 or Section 324 of the DGCL.

Section 5.11. Notice to Person with Whom Communication is Unlawful.

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 5.12. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## Article VI

### AMENDMENTS

These Bylaws may be adopted, amended, altered or repealed by the Board or by the stockholders of the Corporation by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; provided, however, that, in the case of any adoption, amendment, alteration or repeal of these Bylaws by the stockholders of the Corporation, notwithstanding any other provision of these Bylaws, and in addition to any other vote that may be required by law or the terms of any series of preferred stock, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with Sections 1.3, 1.7(b), 1.11, 2.1 or 2.8 or this Article VI.

\* \* \*

Adopted as of: March 13, 2024

**EXHIBIT C-2**

**Blackline of Amended TopCo CoI**

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF

~~PROTERRA INC~~<sup>†</sup>

Proterra Inc, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware “(the “Corporation”), ~~does hereby certify that the Certificate of Incorporation of this incorporation are~~

DOES HEREBY CERTIFY THAT:

1. The name of the Corporation is Proterra Inc and that the Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on June 11, 2021 under the name ArcLight Clean Transition Corp.

2. This Amended and Restated Certificate of Incorporation, which both restates and amends the provisions of the Certificate of Incorporation was duly approved and authorized in accordance with Sections 242, 245 and 303(a), (b) and (c) of the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered on March 6, 2024, confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Proterra Inc and its Debtor Affiliate*, March 1, 2024 (including all exhibits thereto and as amended, modified and supplemented from time to time, the “Plan”) filed in the cases commenced under title 11 of the United States Code, 11 U.S.C. §§ 101–1532, jointly administered as Case No. 23-11120 pending before the Bankruptcy Court).

3. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety so as to read as follows:

FIRST: The name of the corporation (which is hereinafter referred to as the “Corporation”) is ~~Proterra~~ Prodigy Investments Holdings, Inc.

SECOND: The address of the Corporation’s registered office in the State of Delaware is ~~Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, 850 New Burton Road, Suite 201, Dover, Kent~~ County ~~of New Castle~~, Delaware ~~19801~~ 19904. The name of the Corporation’s registered agent at such address is ~~The Corporation Trust Company~~ Cogency Global Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is ~~[•]~~ 1,000,000 shares of common stock with a par value of \$0.0001 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation (the “Board”) is expressly authorized to make, alter or repeal the ~~By-laws~~Bylaws of the Corporation, subject to any specific limitation on such power contained in any ~~By-laws~~Bylaws adopted by the stockholders. Elections of directors need not be by written ballot unless the ~~By-laws~~Bylaws of the Corporation so provide.

SIXTH: No director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (a) of a director or officer for any breach of the director’s or officer’s duty of loyalty to the Corporation or its stockholders, (b) of a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) of a director under Section 174 of the General Corporation Law of Delaware, (d) of a director or officer for any transaction from which the director or officer derived an improper personal benefit or (e) of an officer in any action by or in the right of the Corporation. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of Delaware, as so amended. Any repeal or modification of this

‡ ~~NTD: To be updated to reflect revised entity name.~~

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Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification. For purposes of this Article Sixth, “officer” shall have the meaning provided in Section 102(b)(7) of the General Corporation Law of Delaware, as it presently exists or may hereafter be amended from time to time.

SEVENTH: Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law of Delaware as it may be in effect from time to time.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

NINTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware or the Certificate of Incorporation or bylaws of the Corporation or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

TENTH:

1. Right to Indemnification and Advancement. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a “Proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of any other Person or enterprise, including, without limitation, service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action or inaction in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of Delaware, as the same exists as of the date hereof or as may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide both prior to such amendment and as of the date hereof), against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, excise taxes of the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to



be a director, officer or trustee and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except as provided in Section 2 of this Article Tenth, the Corporation shall indemnify any such person seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article Tenth shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in connection with any such Proceeding in advance of its final disposition; *provided, however*, that, if the General Corporation Law of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article Tenth or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors, officers and trustees.

2. Right of Claimant to Bring Suit. If a claim under Section 1 of this Article Tenth is not paid in full by the Corporation within thirty days after written notice thereof has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation, and as to any such other action as to which it shall not be a defense) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct under the General Corporation Law of Delaware, nor an actual determination by the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Indemnitor of First Resort. The Corporation acknowledges that the directors designated by the Majority Holder (as defined below) (collectively, the “Fund Directors” and each, a “Fund Director”) have certain rights to indemnification, advancement of expenses and/or insurance provided by their employers and certain of their Affiliates (collectively, the “Fund Indemnitors”). To the extent the Corporation has an indemnity obligation hereunder, the Corporation shall (a) act as the indemnitor of first resort (i.e., its obligations to the Fund Directors are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such directors are secondary), (b) be required to advance the full amount of expenses incurred by

the Fund Directors and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Certificate of Incorporation of the Corporation (or any other agreement between the Corporation and a Fund Director), without regard to any rights a Fund Director may have against the Fund Indemnitors and (c) irrevocably waive, relinquish and release the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Fund Director with respect to any claim for which such director has sought indemnification from the Corporation shall affect the foregoing. The Corporation shall promptly reimburse upon demand the Fund Indemnitors making any advancement or payment on behalf of a Fund Director with respect to any such claim, and, to the extent not fully reimbursed by the Corporation, the Fund Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of such director against the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition conferred in this Article Tenth shall not be (and they shall not be deemed to be) exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the Corporation or another corporation, or of a partnership, joint venture, trust or other enterprise against any expense, liability or loss (as such terms are used in this Article Tenth), whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

6. Impairment of Existing Rights. Any repeal or modification of this Article Tenth shall not impair or otherwise affect any rights, or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

7. Construction and Presumption. This Article Tenth shall be liberally construed in favor of indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition. There shall be a rebuttable presumption that a claimant under this Article Tenth is entitled to such indemnification and the Corporation shall bear the burden of proving by a preponderance of the evidence that such claimant is not so entitled to indemnification.

8. Confidentiality. Any finding that a person asserting a claim for indemnification pursuant to this Article Tenth is not entitled to such indemnification, and any non-public information which may support such finding, shall be held in confidence to the extent permitted by law and shall not be disclosed to any third party.

9. Severability. If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to require the Corporation to indemnify and advance expenses.

#### ELEVENTH:

1. In recognition and anticipation that (a) certain directors, principals, members, officers, associated funds, employees and/or other representatives of the Majority Holder may serve as directors, officers or agents of the Corporation, (b) the Majority Holder may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article Eleventh are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Majority Holder or the Non-Employee Directors and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. None of (a) the Majority Holder or (b) any Non-Employee Director (including, with respect to any Non-Employee Director who serves as an officer of the Corporation, in both his or her director and officer capacities) or his or her Affiliates (the Persons identified in clauses (a) and (b) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 4 of this Article Eleventh. Subject to said Section 4 of this Article Eleventh, in the event that any Identified Person acquires knowledge of a potential transaction or other

matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

3. The Corporation and its Affiliates do not have any rights in or to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer, client or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

4. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person in writing solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 2 of this Article Eleventh shall not apply to any such corporate opportunity.

5. In addition to and notwithstanding the foregoing provisions of this Article Eleventh, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (b) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

6. The Corporation shall not, without the prior written consent of the Majority Holder, amend, modify or revoke the provisions set forth in this Article Eleventh or any of the related definitions in Article Thirteenth at any time the Majority Holder holds any stock. Each stockholder of the Corporation hereby agrees to take all actions necessary or desirable to effect the foregoing sentence, including voting for or consenting to, or voting against or refusing to consent to, amendments to the Certificate of Incorporation (whether effected by merger, consolidation or otherwise) in order to give effect to the immediately preceding sentence. If any provision or provisions of this Article Eleventh or any of the related definitions in Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each such portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth

containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law. This Article Eleventh or any of the related definitions in Article Thirteenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the bylaws of the Corporation, applicable law, any agreement or otherwise. This Article Eleventh or any of the related definitions in Article Thirteenth supersedes any conflicting corporate policies (including, without limitation, any procedures required under any corporate policy).

7. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the corporation shall be deemed to have notice of and to have consented to the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth.

TWELFTH: The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the “Bankruptcy Code”) as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Article Twelfth (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

THIRTEENTH: As used in this Certificate of Incorporation, the following terms shall have the following meaning:

1. “Affiliate” of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

2. “Majority Holder” means Anthelion Capital Partners LLC and its Affiliates (other than the Corporation and the Subsidiaries of the Corporation, if any) and their successors and assigns.

3. “Person” means an individual, corporation, limited liability company or partnership, association, joint stock company, trust, joint venture, unincorporated organization, the United States of America or any other nation, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, or other entity of any nature, including, without limitation, any pension, profit sharing or other benefit plan or trust.

4. “Subsidiary” means: (a) any Person of which the Corporation owns, directly or indirectly, securities having a majority of the voting power in electing the board of directors directly or through one or more subsidiaries (or, in the case of a partnership, limited liability company or other similar entity, securities conveying, directly or indirectly, a majority of the economic interests in such partnership or entity), or (b) any other Person of which the Corporation or any Subsidiary serves as general partner or managing member. The term Subsidiary shall include all Subsidiaries of such Subsidiary.

~~The foregoing amended and restated certificate of incorporation was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.~~

\* \* \*

*[Signature Page Follows]*

~~In~~IN WITNESS WHEREOF, ~~Proterra Inc~~the Corporation has caused this certificate to be signed by ~~its [9], this [9]~~a duly authorized officer of the Corporation, this 13<sup>th</sup> day of ~~[9],~~March 2024.

/s/ Ewa Kozicz

Name: Ewa Kozicz

Title: President, Secretary, and Treasurer

~~[Signature Page to A&R Certificate of Incorporation of  
Proterra Inc]~~

[Signature Page to A&R Certificate of Incorporation of  
Proterra Inc]

**EXHIBIT D-2**

**Blackline of Amended OpCo Bylaws**



**AMENDED AND RESTATED BYLAWS  
OF**

**~~PROTERRA~~CAMBER OPERATING COMPANY, INC.<sup>†</sup>**

(hereinafter called the “Corporation”)

**Article I**

**MEETINGS OF STOCKHOLDERS**

Section 1.1. Place of Meetings. Meetings of the stockholders of the Corporation for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the board of directors of the Corporation (the “**Board**”). The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communications as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”).

Section 1.2. Annual Meetings. The annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly be brought before the meeting in accordance with these amended and restated bylaws of the Corporation (as amended from time to time in accordance with the provisions hereof, these “**Bylaws**”) shall be held on such date and at such time as shall be designated from time to time by the Board. The Chairperson of the Board, the Chief Executive Officer or the Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

Section 1.3. Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation (including the terms of any certificate of designation with respect to any series of preferred stock), as amended and restated from time to time (the “**Certificate of Incorporation**”), special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by the Chairperson of the Board, the Chief Executive Officer or the Board or a majority of stockholders. If any person(s) other than the Board calls a special meeting, the request shall (a) be in writing, (b) specify the general nature of the business proposed to be transacted and (c) be delivered personally or sent by registered mail, return receipt requested, or by facsimile transmission to the Chairperson of the Board, Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) or Secretary. The officer of the Company receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the place, if any, and hour determined by the Board, which shall not be fewer than 30 nor more than 120 days after the date of receipt of the request. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously called by any of them.

<sup>†</sup> ~~NTD: To be updated to reflect revised entity name.~~

Section 1.4. Notice. Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law or the Certificate of Incorporation, written notice of any meeting shall be given either personally, by mail or by electronic transmission (if permitted under the circumstances by the DGCL) not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at the stockholder's address as it appears on the stock transfer books of the Corporation. If notice is given by means of electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any stockholder may waive notice of any meeting before or after the meeting. The attendance of a stockholder at any meeting shall constitute a waiver of notice at such meeting, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders need be specified in any waiver of notice unless so required by law.

Section 1.5. Adjournments. Any meeting of stockholders of the Corporation may be adjourned or recessed from time to time to reconvene at the same or some other place, if any, by holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, though less than a quorum, or by any officer entitled to preside at or to act as secretary of such meeting, and notice need not be given of any such adjourned or recessed meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or recessed meeting, are (a) announced at the meeting at which the adjournment or recess is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned or recessed meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, notice of the adjourned meeting in accordance with the requirements of Section 1.4 of these Bylaws shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.6. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to such vote. If a quorum shall not be present or represented at any meeting of stockholders, the chairperson of the meeting, any officer entitled to preside at or to act as secretary of such meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 1.5 of these Bylaws, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7. Voting.

(a) Matters Other Than Election of Directors. Any matter brought before any meeting of stockholders of the Corporation, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the voting power of the Corporation's capital stock present in person or represented by proxy at the meeting and entitled to vote on such matter, voting as a single class, unless the matter is one upon which, by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Except as provided in the Certificate of Incorporation, every stockholder having the right to vote shall have one vote for each share of stock having voting power registered in such stockholder's name on the books of the Corporation. Such votes may be cast in person or by proxy as provided in Section 1.10 of these Bylaws. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) Election of Directors. Except as provided in Section 2.8 of these Bylaws, election of directors at all meetings of the stockholders at which directors are to be elected shall be by a plurality of the votes cast.

Section 1.8. Voting of Stock of Certain Holders. Shares of stock of the Corporation standing in the name of a deceased person, a minor, an incompetent or a debtor in a case under Title 11, United States Code, and entitled to vote may be voted by an administrator, executor, guardian, conservator, debtor-in-possession or trustee, as the case may be, either in person or by proxy, without transfer of such shares into the name of the official or other person so voting. A stockholder whose shares of stock of the Corporation are pledged shall be entitled to vote such shares, unless on the transfer records of the Corporation such stockholder has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or the pledgee's proxy, may vote such shares.

Section 1.9. Treasury Stock. Shares of stock of the Corporation belonging to the Corporation, or to another corporation a majority of the shares entitled to vote in the election of directors of which are held by the Corporation, shall not be voted at any meeting of stockholders of the Corporation and shall not be counted in the total number of outstanding shares for the

purpose of determining whether a quorum is present. Nothing in this Section 1.9 shall limit the right of the Corporation to vote shares of stock of the Corporation held by it in a fiduciary capacity.

Section 1.10. Proxies. Each stockholder entitled to vote at a meeting of stockholders of the Corporation may authorize another person or persons to act for such stockholder by proxy filed with the Secretary before or at the time of the meeting. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Section 1.11. Consent of Stockholders in Lieu of Meeting. Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

Section 1.12. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make or have prepared and made, at least ten (10) days before every meeting of stockholders of the Corporation, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 1.12 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 1.13. Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next

preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, but the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.13 at the adjourned meeting.

Section 1.14. Organization and Conduct of Meetings. The Chairperson of the Board shall act as chairperson of meetings of stockholders of the Corporation (the “**Chairperson of the Meeting**”). The Board may designate any other director or officer of the Corporation to act as Chairperson of the Meeting in the absence of the Chairperson of the Board, and the Board may further provide for determining who shall act as Chairperson of the Meeting in the absence of the Chairperson of the Board and such designee. If the Chairperson of the Board is absent and the Board has not designated a replacement for Chairperson of the Meeting, the Vice Chairperson of the Board, if any, or in the absence of the foregoing person, the Chief Executive Officer, if any, or in the absence of the foregoing person, a Vice President of the Company, if any, or in the absence of the foregoing person, the Secretary, or in the absence of the foregoing person, a chairperson chosen at such meeting by the holders of a majority of the shares present or represented at such meeting, shall serve as the Chairperson of the Meeting. The Board may adopt by resolution such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants. Except to the extent inconsistent with the rules and regulations as adopted by the Board, the Chairperson of the Meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairperson of the Meeting, are appropriate for the proper conduct of the meeting. Except to the extent determined by the Board or the Chairperson of the Meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary, or in the Secretary’s absence an Assistant Secretary, shall act as secretary of the meeting of stockholders, but if neither the Secretary nor an Assistant Secretary is present, the Chairperson of the Meeting shall appoint any person present to act as secretary of the meeting.

## Article II

### DIRECTORS



Section 2.1. Number; Term. The Board shall consist of one or more members. Unless the Certificate of Incorporation fixes the number of directors, the number of directors shall be fixed, from time to time, exclusively by the Board, subject to any limitations in any stockholder agreement or the rights of the holders of preferred stock with respect to the election of directors, if any. Each director shall hold office until a successor is duly elected and qualified or until the director's death, resignation, disqualification or removal.

Section 2.2. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 2.3. Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as may from time to time be determined by the Board. Special meetings of the Board may be called by the Chairperson of the Board (if there be one), the Chief Executive Officer or the Board and shall be held at such place, on such date and at such time as he, she or it shall specify.

Section 2.4. Notice. Notice of any meeting of the Board stating the place, date and time of the meeting shall be given to each director by mail posted not less than five (5) days before the date of the meeting, by nationally recognized overnight courier deposited not less than two (2) days before the date of the meeting or by email, facsimile or other means of electronic communication delivered or sent not less than twenty-four (24) hours before the date and time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. If mailed or sent by overnight courier, such notice shall be deemed to be given at the time when it is deposited in the United States mail with first class postage prepaid or deposited with the overnight courier. Notice by facsimile or other electronic transmission shall be deemed given when the notice is transmitted. Any director may waive notice of any meeting before or after the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where the director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting unless so required by law.

Section 2.5. Chairperson of the Board. The Chairperson of the Board shall be chosen from among the directors and may be the Chief Executive Officer. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairperson of the Board shall preside at all meetings of stockholders and of the Board. The Chairperson of the Board shall have such other powers and duties as may from time to time be assigned by the Board.

Section 2.6. Organization. At each meeting of the Board, the Chairperson of the Board, or, in the Chairperson's absence, a director chosen by a majority of the directors present, shall act as chairperson. The Secretary shall act as secretary at each meeting of the Board. In case the Secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary

and all assistant secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.7. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving notice in writing or by electronic transmission to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Subject to any limitations in any stockholder agreement or the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation in accordance with the provisions of the DGCL.

Section 2.8. Newly Created Directorships and Vacancies. Any newly created directorships and any vacancies on the Board may be filled by the affirmative votes of a majority of the remaining members of the Board, although less than a quorum. A director so elected shall hold office until the earlier of the expiration of the term of the director whom he or she has replaced, the proper election and qualification of a successor or that director's death, resignation, disqualification or removal.

Section 2.9. Quorum. At all meetings of the Board, a majority of directors constituting the Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 2.10. Actions of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee.

Section 2.11. Telephonic Meetings. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.11 shall constitute presence in person at such meeting.

Section 2.12. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation and, to the extent permitted by law, to have and exercise such authority as may be provided for in the resolutions creating such committee, as such resolutions may be amended from time to time. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at

the meeting in the place of any absent or disqualified member. Each committee shall keep regular minutes and report to the Board when required. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have the power at any time to fill vacancies in, to change the membership of or to dissolve any such committee.

Section 2.13. Compensation. The Board shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board or any committee thereof and may be paid a fixed sum for attendance at each such meeting and an annual retainer or salary for service as director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Directors who are full-time employees of the Corporation shall not receive any compensation for their service as director.

Section 2.14. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes the contract or transaction.

### Article III

#### OFFICERS

Section 3.1. General. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer (or, alternatively, a President), a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairperson of the Board (who must be a director), a Vice Chairperson of the Board (who must be a director), a President, a Chief Financial Officer, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers as the Board from time to time may deem appropriate. Any two or more offices may be held by the same person. The officers of the Corporation need not be stockholders of the Corporation nor, except in the



case of the Chairperson of the Board or the Vice Chairperson of the Board, directors of the Corporation.

Section 3.2. Election; Term. The Board shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board, and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the Board. Any officer may resign upon notice given in writing or electronic transmission to the Chief Executive Officer (or, if none, the President) or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event. Any vacancy occurring in any office of the Corporation shall be filled in the manner prescribed in this Article III.

Section 3.3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer (or, if none, the President) or any other officer authorized to do so by the Board, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 3.4. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision over the business of the Corporation and shall direct the affairs and policies of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 3.5. President. The President (if any) shall act in a general executive capacity and shall assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chief Executive Officer or if there be none, perform all duties of the Chief Executive Officer.

Section 3.6. Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. The Executive Vice Presidents (if any), Senior Vice Presidents (if any) and such other Vice Presidents as shall have been chosen by the Board shall have such powers and shall perform such duties as shall be assigned to them by the Board.

Section 3.7. Secretary. The Secretary shall give the requisite notice of meetings of stockholders and directors and shall record the proceedings of such meetings and, besides the Secretary's powers and duties prescribed by law, shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.8. Treasurer. The Treasurer shall have charge of the funds and securities of the Corporation and shall have such other powers and perform such other duties as shall at any time be assigned to such officer by the Board.

Section 3.9. Assistant Secretaries. Assistant Secretaries (if any) shall assist the Secretary in the discharge of the Secretary's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Secretary, shall perform the duties of the Secretary's office, subject to the control of the Board.

Section 3.10. Assistant Treasurers. Assistant Treasurers (if any) shall assist the Treasurer in the discharge of the Treasurer's duties, shall have such powers and perform such other duties as shall at any time be assigned to them by the Board and, in the absence or disability of the Treasurer, shall perform the duties of the Treasurer's office, subject to the control of the Board.

Section 3.8. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## Article IV

### STOCK

Section 4.1. Stock Certificates. Unless otherwise provided by resolution of the Board, each class or series of shares of the Corporation's capital stock shall be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two authorized officers of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Uncertificated shares shall be transferable only on the books of the Corporation by the holder thereof in person or by attorney upon presentment of proper evidence of succession, assignation or authority to transfer in accordance with the customary procedures for transferring shares in uncertificated form.

Section 4.2. Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which

record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

Section 4.3. Dividends. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

Section 4.4. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## Article V

### MISCELLANEOUS

Section 5.1. Contracts. The Board may authorize any officer or officers or any agent or agents to enter into any contract or execute and deliver any instrument or other document in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board. Unless otherwise fixed by the Board, the fiscal year of the Corporation shall be the calendar year.

Section 5.4. Corporate Seal. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 5.5. Offices. The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept (subject to any applicable law) outside the State of Delaware at the principal executive offices of the Corporation or at such other place or places as may be designated from time to time by the Board.

Section 5.6. Conflict with Certificate of Incorporation. These Bylaws are adopted subject to the Certificate of Incorporation. Whenever these Bylaws may conflict with the

Certificate of Incorporation, such conflict shall be resolved in favor of the Certificate of Incorporation.

Section 5.7. Execution in Counterpart and by Electronic Means. Subject to the DGCL, signatures on any notice, resolution, requisition, statement or other document required or permitted to be executed for the purposes of the DGCL may be obtained by means of facsimile or other electronic means or by execution of several documents of like form, each of which is executed by one or more persons, and such documents, when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one document for the purposes of the DGCL.

Section 5.8. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or any regular or special meeting of the Board or committee thereof need be specified in any waiver of notice of such meeting unless so required by law.

Section 5.9. Forum for Certain Actions.

(a) Forum. Unless a majority of the Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws (in each case, as may be amended from time to time), (iv) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants.

(b) Personal Jurisdiction. If any action the subject matter of which is within the scope of subparagraph (a) of this Section 5.9 is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce subparagraph (a) of this Section 5.9 (an "**Enforcement Action**") and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

(c) Enforceability. If any provision of this Section 5.9 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason

whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 5.8, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

Section 5.10. Notice to Stockholders Sharing an Address.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice permitted under this Section 5.10, shall be deemed to have consented to receiving such single written notice. This Section 5.10 shall not apply to Section 164, Section 296, Section 311, Section 312 or Section 324 of the DGCL.

Section 5.11. Notice to Person with Whom Communication is Unlawful.

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 5.12. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## Article VI

### AMENDMENTS

These Bylaws may be adopted, amended, altered or repealed by the Board or by the stockholders of the Corporation by the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; provided, however, that, in the case of any adoption, amendment, alteration or repeal of these Bylaws by the stockholders of the Corporation, notwithstanding any other provision of these Bylaws, and in addition to any other vote that may be required by law or the terms of any series of preferred stock, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with Sections 1.3, 1.7(b), 1.11, 2.1 or 2.8 or this Article VI.

\* \* \*

Adopted as of: March 13, 2024

**EXHIBIT E-2**

**Blackline of Amended OpCo CoI**

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF

~~†~~PROTERRA OPERATING COMPANY, INC.~~†~~<sup>1</sup>

Proterra Operating Company, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ~~“(the “Corporation”), does hereby certify that the Certificate of Incorporation of this incorporation are~~

DOES HEREBY CERTIFY THAT:

1. The name of the Corporation is Proterra Operating Company, Inc. and that the Corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on February 2, 2010 under the name Proterra Inc.

2. This Amended and Restated Certificate of Incorporation, which both restates and amends the provisions of the Certificate of Incorporation was duly approved and authorized in accordance with Sections 242, 245 and 303(a), (b) and (c) of the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered on March 6, 2024, confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Proterra Inc and its Debtor Affiliate*, March 1, 2024 (including all exhibits thereto and as amended, modified and supplemented from time to time, the “Plan”) filed in the cases commenced under title 11 of the United States Code, 11 U.S.C. §§ 101–1532, jointly administered as Case No. 23-11120 pending before the Bankruptcy Court).

3. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety so as to read as follows:

FIRST: The name of the corporation (which is hereinafter referred to as the “Corporation”) is ~~Proterra~~Camber Operating Company, Inc.:-

SECOND: The address of the Corporation’s registered office in the State of Delaware is ~~Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, 850 New Burton Road, Suite 201, Dover, Kent~~ County ~~of New Castle~~, Delaware ~~19801~~19904. The name of the Corporation’s registered agent at such address is ~~The Corporation Trust Company~~Cogency Global Inc.

<sup>1</sup>- NTD: To be updated to reflect revised entity name.



THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is ~~[-]~~1,000 shares of common stock with a par value of \$0.0001 per share.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation (the “Board”) is expressly authorized to make, alter or repeal the ~~By-laws~~Bylaws of the Corporation, subject to any specific limitation on such power contained in any ~~By-laws~~Bylaws adopted by the stockholders. Elections of directors need not be by written ballot unless the ~~By-laws~~Bylaws of the Corporation so provide.

SIXTH: No director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (a) of a director or officer for any breach of the director’s or officer’s duty of loyalty to the Corporation or its stockholders, (b) of a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) of a director under Section 174 of the General Corporation Law of Delaware, (d) of a director or officer for any transaction from which the director or officer derived an improper personal benefit or (e) of an officer in any action by or in the right of the Corporation. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of Delaware, as so amended. Any repeal or modification of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification. For purposes of this Article Sixth, “officer” shall have the meaning provided in Section 102(b)(7) of the General Corporation Law of Delaware, as it presently exists or may hereafter be amended from time to time.

SEVENTH: Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law of Delaware as it may be in effect from time to time.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

NINTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action

asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware or the Certificate of Incorporation or bylaws of the Corporation or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

TENTH:

1. Right to Indemnification and Advancement. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a “Proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of any other Person or enterprise, including, without limitation, service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action or inaction in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of Delaware, as the same exists as of the date hereof or as may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide both prior to such amendment and as of the date hereof), against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, excise taxes of the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or trustee and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that, except as provided in Section 2 of this Article Tenth, the Corporation shall indemnify any such person seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article Tenth shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in connection with any such Proceeding in advance of its final disposition; *provided, however*, that, if the General Corporation Law of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article Tenth or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors, officers and trustees.

2. Right of Claimant to Bring Suit. If a claim under Section 1 of this Article Tenth is not paid in full by the Corporation within thirty days after written notice thereof has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the

claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation, and as to any such other action as to which it shall not be a defense) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct under the General Corporation Law of Delaware, nor an actual determination by the Corporation (including, without limitation, the Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Indemnitor of First Resort. The Corporation acknowledges that the directors designated by the Majority Holder (as defined below) (collectively, the “Fund Directors” and each, a “Fund Director”) have certain rights to indemnification, advancement of expenses and/or insurance provided by their employers and certain of their Affiliates (collectively, the “Fund Indemnitors”). To the extent the Corporation has an indemnity obligation hereunder, the Corporation shall (a) act as the indemnitor of first resort (i.e., its obligations to the Fund Directors are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such directors are secondary), (b) be required to advance the full amount of expenses incurred by the Fund Directors and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Certificate of Incorporation of the Corporation (or any other agreement between the Corporation and a Fund Director), without regard to any rights a Fund Director may have against the Fund Indemnitors and (c) irrevocably waive, relinquish and release the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Fund Director with respect to any claim for which such director has sought indemnification from the Corporation shall affect the foregoing. The Corporation shall promptly reimburse upon demand the Fund Indemnitors making any advancement or payment on behalf of a Fund Director with respect to any such claim, and, to the extent not fully reimbursed by the Corporation, the Fund Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of such director against the Corporation.

4. Non-Exclusivity of Rights. The rights to indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition conferred in this Article Tenth shall not be (and they shall not be deemed to be) exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, trustee, employee or agent of the Corporation or another corporation, or of a partnership, joint venture, trust or other enterprise against any expense, liability or loss (as such terms are used in this Article Tenth), whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

6. Impairment of Existing Rights. Any repeal or modification of this Article Tenth shall not impair or otherwise affect any rights, or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

7. Construction and Presumption. This Article Tenth shall be liberally construed in favor of indemnification and the payment of expenses incurred in connection with a Proceeding in advance of its final disposition. There shall be a rebuttable presumption that a claimant under this Article Tenth is entitled to such indemnification and the Corporation shall bear the burden of proving by a preponderance of the evidence that such claimant is not so entitled to indemnification.

8. Confidentiality. Any finding that a person asserting a claim for indemnification pursuant to this Article Tenth is not entitled to such indemnification, and any non-public information which may support such finding, shall be held in confidence to the extent permitted by law and shall not be disclosed to any third party.

9. Severability. If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to require the Corporation to indemnify and advance expenses.

#### ELEVENTH:

1. In recognition and anticipation that (a) certain directors, principals, members, officers, associated funds, employees and/or other representatives of the Majority Holder may serve as directors, officers or agents of the Corporation, (b) the Majority Holder may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the

Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article Eleventh are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Majority Holder or the Non-Employee Directors and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. None of (a) the Majority Holder or (b) any Non-Employee Director (including, with respect to any Non-Employee Director who serves as an officer of the Corporation, in both his or her director and officer capacities) or his or her Affiliates (the Persons identified in clauses (a) and (b) above being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 4 of this Article Eleventh. Subject to said Section 4 of this Article Eleventh, in the event that any Identified Person acquires knowledge of a potential transaction or other matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

3. The Corporation and its Affiliates do not have any rights in or to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer, client or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

4. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person in

writing solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 2 of this Article Eleventh shall not apply to any such corporate opportunity.

5. In addition to and notwithstanding the foregoing provisions of this Article Eleventh, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (b) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

6. The Corporation shall not, without the prior written consent of the Majority Holder, amend, modify or revoke the provisions set forth in this Article Eleventh or any of the related definitions in Article Thirteenth at any time the Majority Holder holds any stock. Each stockholder of the Corporation hereby agrees to take all actions necessary or desirable to effect the foregoing sentence, including voting for or consenting to, or voting against or refusing to consent to, amendments to the Certificate of Incorporation (whether effected by merger, consolidation or otherwise) in order to give effect to the immediately preceding sentence. If any provision or provisions of this Article Eleventh or any of the related definitions in Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth (including, without limitation, each such portion of any paragraph of this Article Eleventh or any of the related definitions in Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law. This Article Eleventh or any of the related definitions in Article Thirteenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the bylaws of the Corporation, applicable law, any agreement or otherwise. This Article Eleventh or any of the related definitions in Article Thirteenth supersedes any conflicting corporate policies (including, without limitation, any procedures required under any corporate policy).

7. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the corporation shall be deemed to have notice of and to have consented to the provisions of this Article Eleventh or any of the related definitions in Article Thirteenth.

TWELFTH: The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this

Article Twelfth (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

THIRTEENTH: As used in this Certificate of Incorporation, the following terms shall have the following meaning:

1. “Affiliate” of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

2. “Majority Holder” means Anthelion Capital Partners LLC and its Affiliates (other than the Corporation and the Subsidiaries of the Corporation, if any) and their successors and assigns.

3. “Person” means an individual, corporation, limited liability company or partnership, association, joint stock company, trust, joint venture, unincorporated organization, the United States of America or any other nation, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, or other entity of any nature, including, without limitation, any pension, profit sharing or other benefit plan or trust.

4. “Subsidiary” means: (a) any Person of which the Corporation owns, directly or indirectly, securities having a majority of the voting power in electing the board of directors directly or through one or more subsidiaries (or, in the case of a partnership, limited liability company or other similar entity, securities conveying, directly or indirectly, a majority of the economic interests in such partnership or entity), or (b) any other Person of which the Corporation or any Subsidiary serves as general partner or managing member. The term Subsidiary shall include all Subsidiaries of such Subsidiary.

~~The foregoing amended and restated certificate of incorporation was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.~~

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[Signature Page Follows]

~~In~~IN WITNESS WHEREOF, ~~Proterra Inc~~the Corporation has caused this certificate to be signed by ~~its [●], this [●]~~a duly authorized officer of the Corporation, this 13<sup>th</sup> day of ~~[●]~~March 2024.

/s/ Brendan Harney\_\_\_\_\_

Name: Brendan Harney

Title: President