IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	**CHAPTER 11**
PROTERRA INC, *et al.*,[1]	)	**CASE NO. 23-11120 (BLS)**
DEBTORS.	)	**JOINTLY ADMINISTERED**

PHILADELPHIA INDEMNITY INSURANCE COMPANY'S LIMITED OBJECTION, JOINDER AND RESERVATION OF RIGHTS WITH RESPECT TO THE DEBTORS' SECOND AMENDED DISCLOSURE STATEMENT [Doc. No. #889]

COMES NOW Philadelphia Indemnity Insurance Company ("Philadelphia"), by and through the undersigned counsel, hereby submits this *Philadelphia Indemnity Insurance Company's Limited Objection, Joinder and Reservation of Rights with Respect to the Debtors' Second Amended Disclosure Statement* (the "Limited Objection"). In support of this Limited Objection, Philadelphia respectfully states as follows:

PRELIMINARY STATEMENT

1. The Disclosure Statement lacks sufficient information for Philadelphia to definitively understand the treatment of its Claims, its Collateral, the Bonds and the Indemnity Agreement (all defined below). Philadelphia submits this Limited Objection then (a) to bring to the Debtors' and all parties' attention the relative silence in the Disclosure Statement and Plan with respect to surety claims and collateral, bonds, indemnity agreements, (b) to preview certain potential issues surrounding non-treatment, (c) to join in the objection made by another surety and

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

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(d) to reserve all of its rights. Philadelphia does not otherwise object to approval of the Debtors' Disclosure Statement.

BACKGROUND

2. Prior to these chapter 11 cases, Philadelphia issued various surety bonds (the "Bonds", and each a "Bond") in the aggregate penal amount of not less than $32,343,956.34 on behalf of the above-referenced Debtors to assure the performance and payments of the Debtors' obligations owed to various of the obligees under the Bonds with respect to various contracts, state permits, and/or state licenses (collectively, the "Bonded Contracts").

3. In consideration of Philadelphia issuing the Bonds on behalf of the Debtors, Debtor Proterra Inc. ("Proterra") executed that certain *General Indemnity Agreement Commercial Surety* dated September 30, 2016 (the "Indemnity Agreement"), on behalf of itself and any subsidiary or affiliate (the "Indemnitors"), and agreed, among other things, to indemnify and hold harmless Philadelphia from and against any Liability & Loss (as defined in the Indemnity Agreement). A redacted copy of the Indemnity Agreement is attached as **Exhibit 1**.

4. Along with the contractual indemnity and other contractual rights and remedies provided under the Indemnity Agreement, Philadelphia has certain rights and remedies against both Debtors as named principals under the respective Bonds, especially indemnity, exoneration, and the right of equitable subrogation under common law.

5. Moreover, as security for the Bonds issued on behalf of the Debtors, the Debtors provided Philadelphia with (a) $12,433,804.00 in cash, (b) an irrevocable letter of credit issued by Bank of America, N.A. in the amount of $2,610,221.00, and (c) an irrevocable letter of credit issued by First-Citizens Bank & Trust Company (Successor by Purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as Successor to Silicon

Valley Bank)) in the amount of $131,470.00 in the amount of $2,610,221.00 (the rights and remedies discussed above, the cash, the two irrevocable letters of credit, and any proceeds thereto, collectively, the "Collateral").

PROCEDURAL BACKGROUND

6. On October 25, 2023, Philadelphia filed proof of claim No. 501 with respect to Proterra Inc. and proof of claim No. 563 with respect to Proterra Operating Company Inc. (collectively, the "Proofs of Claim", and the claims asserted therein, the "Claims"). Philadelphia hereby incorporates by reference the Proofs of Claim and all applicable exhibits thereto as if stated word for word herein.

7. On December 17, 2023, the Debtors filed the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Doc. No. 738], and the Debtors subsequently filed a *First Amended* [Doc. No. 796] and *Second Amended* [Doc. No. 889] to it on January 2 and 15 of 2024, respectively (collectively, the "Disclosure Statement").

8. Concurrently with the Disclosure Statement, the Debtors filed the *Joint Chapter 11 Plan of Reorganization for Proterra Inc and Its Debtor Affiliate* [Doc. No. 737] and subsequently filed a *First Amended* [Doc. No. 795] and a *Second Amended* [Doc. No. 888] (collectively, the "Plan").

9. On January 2, 2024, the Debtors filed a motion, in part, seeking entry of an order approving the adequacy of the Disclosure Statement, for which a hearing is currently scheduled for January 23, 2024.

LIMITED OBJECTION

10. Philadelphia joins paragraphs 1 and 22-27 of Lexon Insurance Company's *Objection and Reservation of Rights* regarding the Disclosure Statement [Doc. No. 891].

11. Philadelphia and the Claims appear to be treated as Other Secured Claims under the Disclosure Statement and Plan. However, the ultimate treatment of the Claims and Philadelphia is unclear because neither the Disclosure Statement nor the Plan are explicit or specific about sureties, surety collateral, bonds, and indemnity agreements, especially with respect to treatment of bonds and indemnity agreements in the event of a reorganization transaction or as part of the continued Proterra Energy business. The treatment of any related bonded obligations is also relevant to the former.

12. Accordingly, Philadelphia seeks clarity with respect to the Debtors' proposed treatment of it, its Claims, its Collateral, the Bonds, and the Indemnity Agreement.

13. Further, Philadelphia reiterates its willingness to work with the Debtors regarding consensual resolution of the issues addressed in this Limited Objection.

RESERVATION OF RIGHTS

14. Philadelphia reserves any and all liens, interests, rights, claims, remedies, defenses, and the like it may assert (a) with respect to the Claim, Collateral, Bonds, or Indemnity Agreement or (b) under applicable law, including, without limitation, the right to object to confirmation, and additionally reserves the right to amend and/or supplement this Limited Objection.

WHEREFORE, Philadelphia requests this Court consider this Limited Objection and grant such other and further relief the Court deems just and proper.

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Respectfully submitted,

__/s/_Gaston P. Loomis_____

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Attorneys for Philadelphia Indemnity Insurance Company

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PROTERRA INC., *et al.*[2],	)	Case No. 23-11120 (BLS)
Debtors.	)	(Jointly Administered)

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on Tuesday, November, 21, 2023, *Philadelphia Indemnity Insurance Company's Limited Objection, Joinder and Reservation of Rights with Respect to the Debtors' Second Amended Disclosure Statement* was e-filed via CM/ECF and served on all parties registered to receive notification of such filings. Additionally, the following parties were served by e-mail:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
Attn. Paul Basta, Esq., and Robert Britton, Esq.
Email: pbasta@paulweiss.com; rbritton@paulweiss.com

Young Conaway Stargatt & Taylor LLP
Attn: Pauline Morgan, Esq., and Andrew Magaziner, Esq.
Email: pmorgan@ycst.com; amagaziner@ycst.com

The Office of the United States Trustee
for the District of Delaware
Attn: Linda J. Casey
Email: linda.casey@usdoj.gov

Lowenstein Sandler LLP
Attn: Jeffrey Cohen, Esq., Eric Chafetz, Esq., Jordana Renert, Esq., and Keara Waldron, Esq.
Email: jcohen@lowenstein.com; echafetz@lowenstein.com; jrenert@lowenstein.com; kwaldron@lowenstein.com

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

Morris James LLP
Attn: Eric Monzo, Esq., and Brya Keilson, Esq.
Email: emonzo@morrisjames.com; bkeilson@morrisjames.com

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

/s/ Gaston P. Loomis
Gaston Loomis, Esq.

EXHIBIT 1

PHILADELPHIA INSURANCE COMPANIES

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GENERAL INDEMNITY AGREEMENT

COMMERCIAL SURETY

THIS GENERAL INDEMNITY AGREEMENT (hereinafter called the "Agreement") is made by the undersigned Indemnitors, jointly and severally, in favor of PHILADELPHIA INDEMNITY INSURANCE COMPANY (hereinafter "Surety"), for the purpose of indemnifying Surety for any Bonds issued pursuant to this Agreement.

WHEREAS, Indemnitors and Principals may be required to give or procure Bonds in the performance of certain agreements and/or contracts, and to renew, continue, extend or substitute such Bonds from time to time; and

WHEREAS, Surety has been requested to execute, or has executed, Bonds on behalf of the Principals with the express understanding Indemnitors execute this Agreement; and

WHEREAS, Indemnitors have a substantial, material and beneficial interest in the obtaining of bonds or in the Surety's refraining from cancelling any or all Bonds.

NOW THEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the Indemnitors and Principals for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with the Surety, along with its successors and assigns, as follows:

1. **DEFINITIONS**: The following terms are defined as follows:

   a. **Bond:** All surety bonds, undertakings, recognizances, instruments of guarantee or other surety obligations and any renewals, modifications or extensions thereof issued on behalf of any Principal by: Surety, or any other party at the request of Surety; and, as to all of the foregoing, whether issued before or after execution of this Agreement. The term Bond also includes any electronic processes in lieu of the issuance of paper bonds, whether in the contract bidding process or otherwise.

   b. **Bonded Contract:** A contract for which Surety issues or has issued a Bond.

   c. **Indemnitors**: All Persons who sign this Agreement or whose authorized representatives sign this Agreement or any other agreement that incorporates by reference the terms of this Agreement, including, without limitation: (i) any Persons added to this Agreement via rider or amendment; (ii) any present or future, direct or indirect, subsidiary, successor, affiliate, or parent of any Indemnitor or Principal; and (iii) any other entity or person in response to a request from any Indemnitor or Principal named herein; and, as to all of the foregoing, whether they act alone or in joint venture with others, whether or not said others are named herein.

   d. **Persons:** An individual, corporation, partnership, Limited Liability Company (hereinafter called LLC), Limited Liability Partnership (hereinafter called LLP), joint venture, trust, estate or other legal entity.

   e. **Principal**: Any Persons for whom Bond(s) are issued by Surety, whether by such Persons' own request or at the request of any Indemnitor, including, without limitation, any present or future, direct or indirect, subsidiary, successor, affiliate, or parent of any Indemnitor or Principal, or any other entity or person in response to a request from any Indemnitor or Principal named herein, and, as to all of the foregoing, whether they act alone or in joint venture with others, whether or not said others are named herein.

   f. **Surety**: Philadelphia Indemnity Insurance Company, or any other present or future subsidiary or affiliate of thereof, which may issue Bonds, as well as any and all sureties, co-sureties or reinsurers who issue,

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execute or reinsure any portion of the Bond or who procure bonds at the request of Surety. The terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsurers.

g. **Default:** Any instance or condition where Principal or Indemnitors: (i) fail to pay any Bond premium charge when due; (ii) forfeit, breach, abandon, repudiate, default or be declared in default on any Bonded Contract; (iii) neglect or refuse to pay for any indebtedness due in relation to any Bonded Contract; (iv) fail to honor any obligation under this Agreement; (v) become subject of any voluntary or involuntary agreements, or proceedings of: liquidation; insolvency, bankruptcy, receivership, trusteeship, or be party to any assignment for the benefit of creditors; (vi) with respect to any Indemnitors which are not individuals, dissolve or cease to continue their legal existence; (vii) in the case of Indemnitors who are individuals, die, abscond, disappear, become incompetent, are convicted of a felony or are imprisoned; or (viii) violate any other written agreement with Surety.

h. **Loss**: Any and all liability, losses, costs, expenses, and fees of whatever kind or nature that Surety may sustain or incur as a result of executing any Bond or as a result of the failure of Principal or Indemnitors to perform or comply with this Agreement. Loss includes but is not limited to: (i) sums posted by Surety as a reserve for the payment of potential losses and/or expenses; (ii) all costs and expenses incurred in connection with investigating, paying or litigating any claim, and/or enforcing this Agreement, including but not limited to legal fees and expenses, professional and consulting fees, technical and expert witness fees and expenses; (iii) all accrued and unpaid premiums owing to Surety for the issuance, continuation or renewal of any Bonds or for any policy of insurance issued by Surety for the Principal or Indemnitors; (iv) funds loaned or advanced by Surety to the Principal; and (v) all other amounts payable to Surety according to the terms and conditions of this Agreement or any other agreement between Surety and Principal or Indemnitors.

2. **PREMIUMS** - The Indemnitors and Principals will pay to the Surety, promptly upon demand, all premiums, costs and charges of the Surety for any Bonds requested from and/or issued by the Surety in accordance with its rate filings, its manual of rates as determined by the Surety, or as otherwise determined by the Surety, and where such premium, costs and charges are annual, continue to pay the same until the Indemnitors or Principals shall deliver evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

3. **INDEMNITY** - Indemnitors agree to indemnify and hold harmless Surety from and against any Loss sustained or incurred: (a) by reason of having executed or being requested to execute any and all Bonds; (b) by failure of Indemnitors or Principals to perform or comply with any of the covenants or conditions of this Agreement or any other agreement; and (c) in enforcing any of the covenants or conditions of this Agreement or any other agreement. The Indemnitors' obligation to indemnify the Surety shall also apply to any Bond renewals, continuations or substitutes therefore. In the event of payments by Surety, Indemnitors agree to accept vouchers, a sworn itemization, or other evidence of such payments as prima facie evidence of the fact and extent of the liability of Indemnitors to Surety in any demand, claim or suit by Surety against Indemnitors. Separate suits may be brought under this Agreement as causes of action accrue, and the pendency or termination of any such suit shall not bar any subsequent action by Surety. The Surety may, but shall not be obligated to, join any or all of the Indemnitors or Principals as parties to any action relating to any Bonds or this Agreement, and Surety shall have no obligation to exhaust any remedies against any person or entity prior to pursuing any such action against one or more Indemnitors or Principals. All Principals and Indemnitors waive and subordinate all rights of indemnity, subrogation, and contribution against each other until all obligations due to the Surety under this Agreement, at law, or at equity have been fully satisfied. The Surety shall be entitled to intervene in any action between one or more Principals or Indemnitors in order to enforce this provision.

4. **POSTING OF COLLATERAL** – Indemnitors agree to deposit immediately upon demand by Surety an amount equal to the greater of: (a) the amount of any reserve established by Surety in its sole discretion to cover any actual or potential liability for any Loss or potential Loss for which Indemnitors would be obliged to

indemnify Surety hereunder; or (b) the amount of any Loss or potential Loss (including legal, professional, consulting, and expert fees and expenses) in relation to any claim or claims or other liabilities asserted against Surety as a result of issuing any Bond, as determined by the Surety in its sole discretion. Surety may, in its sole discretion, either retain or use any part or all of the collateral in settlement or payment of any claim made under any Bond, as reimbursement for any actual Loss already incurred, as reserve to cover the amount of any potential Loss, or for any other purpose related to any Loss, liability, or expense for which the Indemnitors would be required to reimburse Surety under the terms of this Agreement. The Principals and Indemnitors shall be obligated to deposit the amount of collateral demanded by Surety regardless of whether they dispute their liability for any Loss or potential Loss or assert any defenses to the validity or enforcement of this Agreement. In the event that Surety demands collateral from more than one Principals or Indemnitors, Surety shall be entitled, in its sole discretion, to apportion the amount of collateral required to be deposited by each Principal or Indemnitor. If Surety permits the Indemnitors to deposit less than the full amount of either (a) or (b) herein, Surety may, from time to time, require the Indemnitors to increase the amount of the collateral by any amount Surety deems appropriate, in its sole discretion, up to an amount equal to the greater of (a) or (b) herein. In the event that the Indemnitors fail to deposit the amount of cash collateral required under this provision, Surety may, in its sole discretion, direct the Indemnitors to deposit alternate forms of collateral security acceptable to Surety. Surety agrees to refund any unused portion of the deposit, without any interest or other damages for loss of use of such funds, upon the termination of all liability of Surety on all Bonds and the full performance of all of the Principals and Indemnitors of all obligations under this Agreement.

5. **ASSIGNMENTS** – In the event of a Default, Principal and Indemnitors do hereby assign, transfer and set over to Surety, as of the date of execution of each Bond, all of their rights under all Bonded Contract(s). In the event that the Surety receives any monies in excess of the total amount of its Loss or potential Loss on any individual Bond or Bonded Contract, Surety shall be entitled to apply any such excess amounts toward the Surety's Loss or potential Loss on any other Bonds or Bonded Contracts until the Surety has been fully reimbursed and collateralized as provided by the terms of this Agreement. In the event of Default, Principal and Indemnitors further hereby agree to appoint and designate Surety and it's authorized representatives as their respective Attorneys-in-Fact with power to (i) endorse and sign in the name of Principal or Indemnitor, as payee or otherwise, all documents and all checks, drafts, warrants or other instruments made or issued in connection with the Bonded Contract(s).

6. **FILING OF AGREEMENT UNDER THE UCC** - This Agreement shall constitute a Security Agreement and grants to Surety a security interest in all assets, and also shall constitute a Financing Statement naming Surety as a secured creditor and each Indemnitor as debtor, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect. The filing or recording of a copy of this Agreement shall be solely at the option of Surety and Surety's failure to do so shall not release or impair any obligations of Indemnitors under this Agreement or otherwise arising, nor shall such failure to file be in any manner a derogation of Surety's rights under this Agreement or otherwise. Each Indemnitor hereby irrevocably appoints and designates Surety or its authorized representative as its respective Attorney-in-Fact to sign any Financing Statement or any other form which may be required in order to file the same in any jurisdiction or office. A carbon, photographic or other reproduction of this Agreement may be filed as a Financing Statement.

7. **SURETY'S CONSENT TO CHANGES** - Surety may consent to changes in any Bond or to changes in the contract or obligation, which is the subject of any Bond, including any changes that might increase the liability of any Principals or Indemnitors, or Surety may refuse to consent to any such change. Surety's actions in consenting or in not consenting to any such change shall not release or affect the obligations of Indemnitors to Surety under this Agreement.

8. **CLAIMS** - Surety shall have the exclusive right, in its sole discretion, to decide and determine whether any claim, liability, suit or judgment made or brought against Surety on any Bond shall or shall not be paid, compromised, resisted, defended, tried or appealed, on the basis of Surety's belief that it is or could be

liable or because the Surety deems it necessary or expedient to do so, and Surety's decision thereon shall be final and binding upon the Indemnitors. Surety shall be entitled to indemnity for any and all disbursements made in good faith related to any such claim, liability, suit, or judgment, which term "good faith" shall be defined to encompass all disbursements made by Surety except those made with deliberate willful malfeasance by Surety. Subject to the Surety's rights set forth in the first sentence of this section, which shall remain in full force and effect, if Principal or Indemnitors desire that the Surety litigate such claim or demand, or defend such suit, or appeal from such judgment, they shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount to be used in paying any judgment or judgments rendered, or which might be rendered, against the Surety, together with interest, costs and attorneys fees.

9. **SURETY'S RIGHT TO DECLINE BONDS** - Surety has the right to decline to execute any Bond requested by the Principal or Indemnitors, including any such Bond requested after Surety has executed a preliminary bond including, but not limited to, a bid or proposal bond, or a Consent of Surety to the issuance of Bonds. Surety's declining to issue or execute any Bond shall not release or affect the obligations of Indemnitors to Surety under this Agreement. Principal and Indemnitors acknowledge that the Surety makes no representations as to the acceptability of any of its Bonds to any person, firm or entity under any contract, and that Principal and Indemnitors shall have no claim against the Surety relating to the failure or refusal of any entity to accept any Bond issued by the Surety.

10. **DISCHARGE OF SURETY** - Upon the request of Surety, Principals and Indemnitors will procure the discharge of Surety from any Bond, and all liability arising there from, and provide evidence to Surety regarding same.

11. **ACCESS TO BOOKS & RECORDS** - Surety, including its designated agents, shall, at any and all times, have unrestricted access upon reasonable notice to review all books and records of Principal and Indemnitors, including all books and records pertaining to their financial condition, and to the status of each unbonded and Bonded Contract. Principal and Indemnitors agree to provide updated financial statements upon the Surety's request. Principal and Indemnitors hereby authorize those with whom such Bonded Contracts are made to furnish to Surety all information concerning such contracts and the work thereunder. Principal and Indemnitors also hereby authorize any bank, financial or lending institution, or depository to provide Surety with access to any bank statements or financial records or any other information or documents requested by Surety.

12. **INDEMNITORS' WAIVER OF NOTICE** - Indemnitors warrant that each of them is specifically and beneficially interested in the obtaining of each Bond and agree to keep themselves fully informed as to the business activities and financial affairs of any one or more of the Indemnitors or any Principal for whom Bonds are executed by Surety. Indemnitors hereby expressly waive any notice from the Surety of any fact or information coming to the attention or knowledge of the Surety which affects its rights or the rights or liabilities of the Indemnitors, including notice of execution of any particular Bond subject to this Agreement.

13. **EFFECT OF INVALIDITY** - Any defect or invalidity in the execution of this Agreement by any Indemnitor shall not in any manner affect the validity of these obligations or the liability hereunder of the other Indemnitors. Invalidity of any provision of this Agreement by reason of the laws of any State or for any other reason shall not render the remaining provisions of this Agreement invalid, and this Agreement shall be construed and enforced with the same effect as though such provision or provisions were omitted.

14. **TERMINATION BY ANY INDEMNITOR** - Any Indemnitor wishing to terminate this Agreement must give Surety written notice by Registered Mail at least thirty (30) days prior to termination. The termination will not affect Indemnitor's obligations hereunder with respect to any Bonds executed and issued prior to the termination of this Agreement by that Indemnitor. The termination by any one Indemnitor shall not affect the liability of any other Indemnitor.

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15. **EFFECT OF CHANGE IN STATUS/TRANSFER OF ASSETS** - Each Principal and Indemnitor agrees not to change or convert its respective individual, corporate or partnership status to the extent such change has the effect of limiting, reducing or shielding the liability of either the entity or its partners and/or officers hereunder, without the prior, express, written consent of Surety. Should any Principal or Indemnitor so change its respective corporate or partnership status without the prior, express, written consent of Surety, Principal or Indemnitor agrees that such change in its status shall not limit, reduce or otherwise shield its obligations, its partners' and/or officers' obligations, to Surety which arise from this Agreement. The Principal and Indemnitors hereby expressly waive as against Surety any and all defenses which may arise from such a conversion to a LLC, LLP or similar status. Principal and Indemnitors acknowledge that the Surety relies upon the assets reflected in their financial statements in the issuance of Bonds, and agree not to dispose of or transfer said assets, except in the ordinary course of business, without the prior, express, written consent of Surety.

16. **NOTICE OF CHANGE IN RESIDENCE** - Each Indemnitor who is an individual agrees to give Surety written notice of any change in his/her principal residence within 30 days of the change of address. Each Indemnitor, which is not an individual, agrees not to change its principal place of business or the state of jurisdiction in which it is incorporated or otherwise organized without also giving Surety 30 day's written notice of the proposed change. If Surety has previously filed a Uniform Commercial Code Financing Statement with respect to such Indemnitor, Indemnitor agrees to file a Financing Statement in the new state or jurisdiction.

17. **EFFECT OF RELEASE OF ANY INDEMNITOR** - Indemnitors agree that, at any time, Surety may release any Indemnitor or Indemnitors from this Agreement, without affecting, reducing or otherwise limiting the obligations of any remaining Indemnitor, and Indemnitors hereby expressly waive both (a) notice from Surety of any such release, and (b) any defense that may be created in favor of any remaining Indemnitor as a result of Surety's release of another Indemnitor. Waiver of any one Default shall not be deemed a waiver of any other Default.

18. **APPLICABILITY OF AGREEMENT** - This Agreement shall apply to all Bonds executed by and/or procured by Surety for Principal, in its own name or as a joint venture with others. Indemnitors expressly waive any defense that may arise as a result of this Agreement having been executed subsequent to the date of the issuance of any Bond and Indemnitors admit and acknowledge that any such Bond was executed pursuant to an Indemnitors' request and in reliance on the Indemnitors' representation and promise to execute this Agreement.

19. **PAYMENTS BY INDEMNITORS** - All payments made by Indemnitors to Surety under this Agreement shall be in United States Dollars and in no other currency and shall be sent, at Surety's discretion via check or wire transfer to any bank account subsequently designated by Surety. All sums payable to the Surety under this Agreement shall bear interest if not paid by Indemnitors within ten (10) days of demand by Surety. The interest rate shall be an annual rate of 10%, or the maximum rate permitted by applicable law if less than 10%.

20. **JURISDICTION** - As to any legal action related to this Agreement, Principal and Indemnitors consent to the jurisdiction of any court of competent jurisdiction, including the jurisdiction of any state or federal court where the Surety, Principal, or one or more of any of the Indemnitors is domiciled or doing business, at the sole discretion of the Surety. Principal and Indemnitors waive any right to trial by a jury for any tort or contract claims related to this Agreement and waive any claim or defense in any such action based on alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis.

21. **NOTICE OF SERVICE** - Notice of Service made by U. S. Mail or by FAX to the last known address constitutes service whether or not received.

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22. **ADDRESS FOR NOTICES** - All notices required to be given by Indemnitors under this Agreement shall be sent by registered mail to Philadelphia Insurance Companies, One Bala Plaza, Bala Cynwyd, PA 19004, Attn: Surety Division.

23. **CONSTRUCTION OF AGREEMENT** - This Agreement shall be liberally construed so as to protect, exonerate, and indemnify Surety, and any ambiguity or inconsistency shall be construed in favor of Surety's rights and remedies. Surety shall have every right, remedy, or defense that any uncompensated personal surety would have, and the provisions of this Agreement shall be cumulative and in addition to any rights, remedies, or defenses available to Surety at law, in equity, or otherwise. No act or failure to act by Surety shall be construed as an election of rights, remedies, or defenses.

24. **CONSENT TO PULL CREDIT REPORTS** – Principal and Indemnitors hereby consent and agree that Surety may access personal credit reports from time to time for the purposes of, (including, but not limited to): (a) evaluating and monitoring credit worthiness for the extension of surety credit; (b) verifying information provided by Principal and Indemnitors; and (c) aiding in the collection of any Loss.

25. **CORPORATE ACTS & APPROVALS** – Principals and Indemnitors acknowledge and agree that each has a material and beneficial interest in all Bonds issued hereunder by the Surety and that each is authorized and empowered by their respective bylaws, charters, membership agreements, or other organizational documents to execute, deliver and perform their obligations under this Agreement with respect to all such Bonds. Principals and Indemnitors further represent and warrant that they have obtained all internal corporate and/or organizational approvals, consents and authorizations necessary to facilitate the execution, delivery and performance of this Agreement, any amendments hereto, and any other agreement executed by any Principal or Indemnitor for the benefit of the Surety. The Surety may also, at its discretion, require that the Principals and Indemnitors provide additional evidence of the foregoing corporate and/or organizational approvals as a condition precedent to the issuance of any Bond or Bonds hereunder. The Principals and Indemnitors hereby agree to promptly comply with all such requests by providing the appropriate documentation in a form deemed acceptable to the Surety.

26. **WRITING CONSTITUTES THE ENTIRE AGREEMENT** - This Agreement constitutes the entire agreement among the Principal, Indemnitors and the Surety regarding the rights and obligations of the parties hereto and supersedes any prior agreement between the parties. The parties acknowledge that there are no other agreements, documents, or understandings, whether oral or written, that comprise any part of this Agreement or in any way modify, change or vitiate the obligations of this Agreement. This Agreement, and the rights and remedies of Surety hereunder may not be waived, challenged or modified orally. No written waiver, change or modification shall be effective unless signed by an officer or other authorized representative of Surety.

IN WITNESS WHEREOF, the Indemnitors, intending to be legally bound hereby, represent that they have read and understood the foregoing provisions, that they freely and voluntarily enter into this Agreement, and they have below set their hands and affixed their seals, as appropriate, this 30th day of September, 20 16.

By signing below each individual executing this Agreement on behalf of a business, and each business entity executing this Agreement on behalf of another business entity represents and warrants that he, she or it is duly authorized by Indemnitor to all of the terms and conditions of this Agreement.

PHILADELPHIA INSURANCE COMPANIES
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WITNESS/ATTEST

Print Name: Kate Teodosio
Title: Executive Assistant

Principal/Indemnitor: Proterra Inc.
By: _____
Print Name: Eric McCarthy
Its: Corporate Secretary
SSN/Tax ID No: [redacted]
Address: 1 Whitlee Court, Greenville, SC 29607
Email Address: EMCCARTHY@PROTERRA.COM

(seal)

ACKNOWLEDGMENTS

Corporate Acknowledgment(s)

STATE OF South Carolina
ss:
COUNTY OF Greenville

On this 30th day of September, 2016, before me, the undersigned, a Notary Public in and for the said State, personally appeared Eric McCarthy, known to me (or proved to me on the basis of satisfactory evidence) to be the Corporate Secretary, of Proterra Inc., the corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

(seal)

Jennifer A. Weaver
Notary Public
My commission expires 10-04-16