

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(Jointly Administered)

**Re: Docket No. 15**

**NOTICE OF FILING OF REVISED PROPOSED BIDDING PROCEDURES ORDER**

**PLEASE TAKE NOTICE** that, on February 19, 2025, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. 15] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, attached to the Motion, among other things, was a proposed form of order approving the relief requested in the Motion (the “Proposed Order”).

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

**PLEASE TAKE FURTHER NOTICE** that, attached hereto as **Exhibit A** is a revised proposed order (the “Revised Proposed Order”), which includes informal comments made by the United States Trustee for the District of Delaware (the “U.S. Trustee”), STORE Master Funding XXXII, LLC (“STORE”) and the Official Committee of Unsecured Creditors (the “Committee”). The Revised Proposed Order has been circulated to the U.S. Trustee and the Committee. For the convenience of the Court and all parties in interest, a blackline of the Revised Proposed Order against the Proposed Order is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that, the Debtors intend to seek entry of the Revised Proposed Order at the hearing (the “Hearing”) scheduled for **March 7, 2025 at 2:00 p.m. (ET)**. The Debtors reserve all rights to further modify the Revised Proposed Order at or prior to the Hearing.

*[Remainder of Page Intentionally Left Blank]*

Dated: March 7, 2025  
Wilmington, Delaware

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**EXHIBIT A**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(Jointly Administered)

**Re: Docket No. 15**

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO DESIGNATE ONE OR MORE STALKING HORSE BIDDERS, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors' headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

and *Unexpired Leases*, and (C) *Granting Related Relief* [Docket No. 15] (the “Motion”)<sup>2</sup> filed by the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); and the Court having reviewed the Motion, the First Day Declaration [Docket No. 18], and the Bidding Procedures Declaration [Docket No. 16]; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on March 7, 2025, to consider certain of the relief requested in the Motion (the “Bidding Procedures Hearing”); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The predicates for the relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. Venue of these cases is proper in this district under 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the Bidding Procedures Hearing, the dates and objection deadlines contained in this Order and the Bidding Procedures, and the proposed entry of this Order was sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local

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<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

Rules. Accordingly, no other or further notice of the Motion, the Bidding Procedures Hearing, or this Order need be provided.

D. The bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”) and incorporated herein by reference as if fully set forth in this Order, are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors’ assets (the “Assets”).

E. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

F. The procedures set forth herein regarding the Debtors’ assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with a sale of the Assets (the “Assumption and Assignment Procedures”) are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve the relief requested in the Motion, including, without limitation, (i) the Bidding Procedures (including the Stalking Horse Designation Procedures); (ii) the form and manner of notice of the Bidding Procedures, the auction of the Assets (the “Auction”), and the final hearing to consider approval of a sale of the Assets (the “Sale Hearing”), substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”); (iii) the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a “Counterparty”) of (a) the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Costs”) and (b) certain other information regarding the potential assumption and assignment of Contracts in connection with the sale of the Assets, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (iv) the Assumption and Assignment

Procedures. Such good and sufficient business reasons, which were set forth in the Motion and on the record at the Bidding Procedures Hearing, including the First Day Declaration and the Bidding Procedures Declaration are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

H. The Bidding Procedures are reasonably designed to promote active bidding at and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

I. The Debtors are authorized to seek payment of the break-up fee and expense reimbursement comprising the Bid Protections pursuant to the procedures set forth in this Order and in compliance with the Stalking Horse Designation Procedures. In the event the Debtors select a Stalking Horse Bidder, the Debtors will provide three (3) calendar days' notice by serving a copy of the proposed Stalking Horse Notice on (a) the Consultation Parties; (b) the U.S. Trustee; (c) any Prospective Bidder (as defined in the Bidding Procedures); (d) all counterparties to the proposed assumed contracts; and (e) the Sale Notice Parties as defined in the Bidding Procedures.

J. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties-in-interest.

L. The Sale Notice, the Publication Notice (as defined below), and the Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the



Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Contracts in connection therewith shall be required.

K. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the relief granted in this Order that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included therein, are hereby overruled, and denied on the merits with prejudice.

**A. The Timeline for the Sale**

3. The Debtors are authorized to proceed with the sale process in accordance with the Bidding Procedures and are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

<b>Two business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Sale Notice
<b>Three business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Assumption and Assignment Notice
<b>Within Five business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter</b>	Deadline to publish Publication Notice
<b>March 17, 2025, at 4:00 p.m. (ET)</b>	Deadline for Debtors to designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement
<b>April 3, 2025, at 4:00 p.m. (ET)</b>	Bid Deadline
<b>April 4, 2025, at 4:00 p.m. (ET)</b>	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
<b>April 7, 2025, at 10:00 a.m. (ET)</b>	Auction (if necessary)
<b>Earlier of five (5) business hours after the conclusion of the Auction and Noon (ET) the calendar day after the conclusion of the Auction</b>	Deadline to file and serve Notice of Auction Results
<b>April 8, 2025 at 4:00 p.m. (ET)</b>	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
<b>12:00 p.m. (ET) one business day before the Sale Hearing</b>	Deadline to reply to any Sale Objections or Supplemental Sale Objections
<b>April 10, 2025 at 10:00 a.m. (ET)</b>	Sale Hearing
<b>April 11, 2025</b>	Deadline to consummate approved Sale

**B. The Bidding Procedures**

4. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved in their entirety and are incorporated by reference as if fully set forth herein. The Bidding Procedures shall govern the selection of the Stalking Horse Bidder, bids and proceedings related to the Auction and the sale of the Assets. The failure to specifically include or reference a particular

provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right to, following consultation with, and with respect to (ix) and (x) below, with either (a) further order of the Court; or (b) the consent of, the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "Committee"), which consent shall not be unreasonably withheld, and any other party that the Debtors may reasonably designate with the consent of the Committee, which consent shall not be unreasonably withheld, solely to the extent it is not participating in the Auction as a bidder, or is a participant in any active or prospective Bid with respect to any Asset(s) (collectively, in such capacities if applicable, the "Consultation Parties"): (i) select a Stalking Horse Bidder and provide such Stalking Horse Bidder with Bid Protections; (ii) determine which bidders qualify as "Qualified Bidders," and which bids qualify as "Qualified Bids;" (iii) make final determinations as to whether the Debtors will conduct or cancel the Auction; (iv) select the Baseline Bid for the Assets; (v) determine the amount of each Minimum Overbid; (vi) determine the highest or otherwise best offer for the Assets (such bid, a "Leading Bid"); (vii) determine which Qualified Bid is the highest or otherwise best bid for the Assets (such Qualified Bid, including the Stalking Horse Bid if no other Qualified Bids are received and no Auction conducted, a "Successful Bid") and which Qualified Bid is the next highest and otherwise best bid after the Successful Bid for the Assets (such Qualified Bid, a "Backup Bid"); (viii) reject any bid that is (a) inadequate or insufficient; (b) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or

(c) contrary to the best interests of the Debtors and their estates; (ix) adjourn the Auction in accordance with the Bidding Procedures; and (x) adjourn the Sale Hearing in accordance with the Bidding Procedures.

6. In accordance with and subject to the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Consultation Parties, to modify the Bidding Procedures, including to (a) extend or waive deadlines or other terms and conditions set forth herein or therein; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders; and (c) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets.

**B. Stalking Horse Agreement and Bid Protections**

7. The Stalking Horse Designation Procedures are approved, and the Debtors are authorized to seek approval of a Stalking Horse Agreement with a Stalking Horse Bidder and provide Bid Protections, in accordance with the Stalking Horse Designation Procedures. The Debtors may, in consultation with the Consultation Parties, designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement **no later than March 17, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties). For the avoidance of doubt, no Bid Protections are approved upon entry of this Order.

**C. Bid Deadline and Auction**

8. Any Prospective Bidder that intends to participate in the Auction must submit in writing to Houlihan Lokey (as defined below) (contact information in Sections I and III of the

Bidding Procedures) a Qualified Bid on or before **April 3, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

9. If the Debtors receive more than one Qualified Bid for the Assets, the Debtors shall conduct an Auction for the Assets.

10. The Auction, if required, will be conducted on **April 7, 2025, at 10:00 a.m. (prevailing Eastern Time)**, either (a) at the offices of Houlihan Lokey, 245 Park Avenue, 20th Floor, New York, New York 10167, (b) at some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will promptly provide notice (via electronic mail or otherwise) of any change in the date, time, or location of the Auction to Qualified Bidders and the Consultation Parties and will promptly cause publication of such change to occur on the Epiq Website (as defined below). If held, the Auction proceedings shall be transcribed or video recorded.

11. If the Debtors determine not to hold an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures), and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors’ claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/Nikola> (the “Epiq Website”), a notice containing the following information (as applicable): (a) a statement that the Auction has been canceled; (b) the identity of

the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (d) the date, time, and location of the Sale Hearing.

12. Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in consultation with the Consultation Parties, and in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction. Notwithstanding the foregoing, the members of the Committee (subject to the limitations imposed by Paragraph 35 hereof), the advisors for the Committee and its members, and the U.S. Trustee shall be permitted to attend the Auction.

13. Each Qualified Bidder participating in the Auction shall confirm in writing on the record that (a) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets; and (b) the Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

14. Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”). The Notice of Auction Results will (a) identify each Successful Bidder and

each Backup Bidder, as applicable; (b) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (c) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**D. Sale Noticing and Objection Procedures**

15. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to the sale of the Assets (each, a “Sale Objection”), including (a) any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Successful Bidder, and/or a Backup Bidder (as applicable) and (b) any objection to the entry of any Sale Order shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”); and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).

16. Following service of the Notice of Auction Results, parties in interest may file an objection solely with respect to the conduct of the Auction, the Successful Bidder, the Backup Bidder, or the Sale to the Successful Bidder or the Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”). Any Supplemental Sale Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with

the Court by **no later than April 8, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”); and (c) served on the Objection Notice Parties.

17. Any party who fails to file and serve a timely Sale Objection or Supplemental Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Supplemental Sale Objection to the relief requested in the Motion, or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Successful Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to “consent” to such sale for purposes of section 363(f) of the Bankruptcy Code.

18. The Debtors or any other party in interest may file a reply to any Sale Objection or Supplemental Sale Objection, if any, by **no later than 12:00 p.m. (prevailing Eastern Time) one business day before the Sale Hearing.**

19. Consummation of the sale of the Assets pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing to (a) approve a sale of all, substantially all, or a portion of the Assets to the Stalking Horse Bidder or another Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held before the Court on **April 10, 2025 at 10:00 a.m. (prevailing Eastern Time)**; *provided, that*, the Debtors may seek from the Court an adjournment or rescheduling of the Sale Hearing, consistent with the Bidding Procedures and this Order. At the Sale Hearing, the Debtors will seek Court approval of the Successful Bid(s) and the Backup Bid(s) (if any). Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale transaction and there will be no further bidding at the Sale Hearing. If the Successful Bidder(s) cannot or refuses to consummate the Sale(s) because of the breach or



failure on the part of such Successful Bidder, the Debtors may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Court.

20. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, or the Supplemental Sale Objection Deadline shall be required if the Debtors serve and publish the Sale Notice in the manner provided in the Bidding Procedures and this Order. **By no later than two (2) business days after entry of the Bidding Procedures Order**, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, the Sale Notice.

21. Within five (5) business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtors shall post the Sale Notice on the Epiq Website and cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of either the Wall Street Journal, USA Today, The New York Times (national edition) or another publication of similar distribution (the "**Publication Notice**").

**E. Assumption and Assignment Procedures**

22. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, is approved, and no other or further notice of the Debtors' intention to assume or assign the Contracts or of the Debtors' proposed Cure Costs is necessary or required. **By no later than three (3) business days after entry of the Bidding Procedures Order**, the Debtors

shall file with the Court, serve on the applicable Counterparties (and counsel, if known), and cause to be published on the Epiq Website, the Assumption and Assignment Notice.

23. To the extent the Debtors, at any time after the deadline to file and serve the Assumption and Assignment Notice (i) identify additional Contracts to be assumed and assigned to any Stalking Horse Bidder or other Successful Bidder (the “Additional Contracts”), (ii) remove Contracts from the list of executory contracts and leases proposed to be assumed and assigned in connection with the sale of the Assets, (iii) and/or modify the previously stated Cure Cost associated with any Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a “Supplemental Assumption and Assignment Notice”) on each of the counterparties to such Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Additional Contracts as was included in the initial Assumption and Assignment Notice. Any Stalking Horse Bidder or other Successful Bidder may designate Additional Contracts to be assumed and assigned at any time until two (2) business days prior to the Closing Date (as defined in the Form APA), and may remove Contracts from the list of Contracts at any time until two (2) business days prior to the Sale Hearing; *provided*, that the Debtors may remove Contracts from the list of Contracts at any time until two (2) business days prior to the Closing Date with two (2) business days advance written notice to the Committee of such removal. Counterparties to Additional Contracts or that otherwise receive a Supplemental Assumption and Assignment Notice shall have until **4:00 p.m. (prevailing Eastern Time) on the date that is ten (10) days after the filing and service of the Supplemental Assumption and Assignment Notice** by the Debtors to the Counterparty to file a Cure Objection (as defined herein).

24. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties. Notwithstanding anything to the contrary in this Bidding Procedures Order, the rights of all parties are fully reserved with respect to any additional or incremental default that occurs with respect to an executory contract following the filing of the Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice, as applicable, and prior to the effective date of assumption.

25. The Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court will make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to this Order. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the sale of the Assets, the Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, may determine, in consultation with the Consultation Parties, that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned in connection with the sale of the Assets (subject to the terms of the applicable purchase agreement); *provided* that in the case of an unexpired lease of nonresidential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed

assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing.

26. If a timely Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Cure Objection (each such Cure Objection, an "Adjourned Cure Objection"). An Adjourned Cure Objection may be resolved after the closing date of the sale of the Assets. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the Contract that was the subject of such Adjourned Cure Objection shall, at the election of the Successful Bidder, and subject to the Debtors' rights set forth in paragraph 28 of this Order, be deemed assumed and assigned to the Successful Bidder as of the closing date of the sale of the Assets.

27. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.

28. In accordance with the Bidding Procedures, Qualified Bids (including any Stalking Horse Bid) shall be accompanied by Adequate Assurance Information (as defined in the Bidding Procedures). The Debtors shall promptly provide, upon a Counterparty's request to the Debtors' counsel, the Adequate Assurance Information to any Counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder. Any Adequate

Assurance Information provided to a Counterparty shall be provided on a confidential basis unless otherwise agreed by the applicable Qualified Bidder.

29. Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's, proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection" and, together with a Cure Objection, a "Contract Objection"), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 8, 2025 at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

30. The Debtors, the Successful Bidder, and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

31. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with

respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

32. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, (i) the Counterparty shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Contract, (ii) the Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document, (iii) the Counterparty shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder), (iv) any and all defaults under the Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Assumption and Assignment Notice for such Contract, and the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract, and (v) the Counterparty shall be forever barred from asserting any other claims related to such Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any Sale Order.

33. As soon as reasonably practicable after the closing of the sale of the Assets, the Debtors shall file with the Court, serve on the applicable Counterparties, and cause to be published on the Epiq Website, a notice containing the list of Contracts that the Debtors assumed

and assigned pursuant to any asset purchase agreement with a Successful Bidder on the closing date of the sale of the Assets.

34. The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

**F. Other Related Relief**

35. Notwithstanding anything herein or in the Bidding Procedures to the contrary, the Debtors shall not be permitted to modify the consent rights of the Committee or the consultation rights of the Consultation Parties in the Bidding Procedures absent further order of this Court or the consent of any affected Consultation Parties, *provided, however*, that the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time, and *provided, further*, that if a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party and its consent rights, *provided* that the Committee shall exclude the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding Committee member. Notwithstanding anything to the contrary herein, (i) upon written notice (which may be via email) by such

Committee member to the Debtors, or express confirmation on the record, if applicable, during the Auction, of its permanent withdrawal as a bidder for the Assets, such Committee member's rights, as applicable, as a Consultation Party shall be restored, and (ii) during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder hereunder, such Consultation Party shall no longer be considered a Consultation Party for purposes of the Bidding Procedures and shall only receive the same diligence, information, and notice as all other Qualified Bidders, unless and until such party unequivocally revokes its bid and waives its right to continue in the Auction process. For the avoidance of doubt, once a Committee member becomes a Consultation Party after withdrawing as a bidder for the Assets, such member shall not be permitted to again become an active bidder for the same Assets.

36. All persons and entities that participate in the Auction or bid for the Assets during the Sale Process shall be deemed to have knowingly and voluntarily (a) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

37. Notwithstanding anything contained in the Bidding Procedures to the contrary, the Debtors reserve the right to, in consultation with the Consultation Parties, consider any bid submitted by a landlord for the purchase of one or more of such landlord's own locations, which



may include a purchase price composed of a (i) cash component, and (ii) a non-cash component that represents a valid and undisputed “credit” for any unpaid amounts validly due under the lease for such location.

38. Nothing in this Order or the Bidding Procedures shall (i) prevent the Debtors from, in the exercise of their fiduciary duties, pursuing or otherwise consummating an alternative transaction or (ii) obligate the Debtors to pursue or consummate any transaction with any Qualified Bidder.

39. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating to the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

40. The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

41. This Order shall be binding on and inure to the benefit of the Debtors, including any Chapter 7 or Chapter 11 trustee or other fiduciary appointed for the estate of the Debtors.

42. This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

43. To the extent any of the deadlines set forth in this Order do not comply with the Local Rules or the Bankruptcy Rules, such rules are waived, and the terms of this Order shall govern.

44. To the extent any provisions of this Order are inconsistent with the Motion or the Bidding Procedures, the terms of this Order shall control.

45. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

**Exhibit 1**

**Bidding Procedures**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(Jointly Administered)

**BIDDING PROCEDURES**

The above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases will use the procedures set forth herein (the “Bidding Procedures”) in connection with a sale or disposition of all, substantially all, or a portion of the Debtors’ assets (the “Assets”).

On February 19, 2025, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. 15] (the “Motion”). By the Motion, the Debtors sought, among other things, entry of an order approving Bidding Procedures for soliciting bids for an auction (the “Auction”) of, and consummating a sale of, the Assets, as further described herein.

On March 7, 2025, the Court entered an *Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

*Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief* [Docket No. [ \_]] (the “Bidding Procedures Order”).<sup>2</sup>

## **I. ASSETS FOR SALE**

The Debtors intend to sell all, substantially all, or a portion of their Assets. The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court.

A Prospective Bidder (as defined in Section III below) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Parties may submit bids for all or some of the Debtors’ business and assets, including for parts of the Debtors’ business or assets (each, a “Partial Bid”), which bids may be combined with other Partial Bids or be considered independently and/or together with the liquidation value (as reasonably determined by the Debtors in good faith) of the Debtors’ business or assets that are not the subject of other Partial Bids to be deemed a Qualified Bid.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the following individuals at Houlihan Lokey Capital, Inc. (“Houlihan Lokey”):

**Houlihan Lokey Capital, Inc.**  
245 Park Avenue, 20th Floor  
New York, NY 10167  
Attn: Drew M. Talarico and Marcus Bellows  
DTalarico@HL.com | (212) 497-4240  
MBellows@HL.com | (212) 497-4214

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in these Bidding Procedures, the Motion, or the Bidding Procedures Order, as applicable.

**II. KEY DATES AND DEADLINES**

<b>Two business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Sale Notice
<b>Three business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Assumption and Assignment Notice
<b>Within Five business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter</b>	Deadline to publish Publication Notice
<b>March 17, 2025, at 4:00 p.m. (ET)</b>	Deadline for Debtors to designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement
<b>April 3, 2025, at 4:00 p.m. (ET)</b>	Bid Deadline
<b>April 4, 2025, at 4:00 p.m. (ET)</b>	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
<b>April 7, 2025, at 10:00 a.m. (ET)</b>	Auction (if necessary)
<b>Earlier of five (5) business hours after the conclusion of the Auction and Noon (ET) the calendar day after the conclusion of the Auction</b>	Deadline to file and serve Notice of Auction Results
<b>April 8, 2025 at 4:00 p.m. (ET)</b>	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
<b>12:00 p.m. (ET) one business day before the Sale Hearing</b>	Deadline to reply to any Sale Objections or Supplemental Sale Objections
<b>April 10, 2025 at 10:00 a.m. (ET)</b>	Sale Hearing
<b>April 11, 2025</b>	Deadline to consummate approved Sale

### III. DUE DILIGENCE

Each person or entity that desires to participate in the Auction process (each, a “Prospective Bidder”) must first deliver to Houlihan Lokey (contact information in Section I above and in this Section III) the following:

- documentation identifying the Prospective Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- an executed confidentiality agreement, in form and substance satisfactory to the Debtors;
- a statement and other factual support demonstrating to the Debtors and their advisors, in their reasonable judgment, that the Prospective Bidder has a *bona fide* interest in purchasing some or all of the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed sale transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of the sale transaction), the adequacy of which the Debtors and their advisors will determine in their reasonable judgment.

Without the need for any further action, any Stalking Horse Bidder is a Qualified Bidder (as defined in Section VI.C below).

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information contained in the Debtors’ confidential electronic data room (the “Data Room”) allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. Access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

If the Debtors determine, after consultation with the Consultation Parties, that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder. For purposes hereof, the term “Consultation Parties” shall include any Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”)<sup>3</sup> and any other party that the Debtors may reasonably designate with the consent of the Committee, which consent shall not be unreasonably withheld, solely to the extent it is not participating in the Auction as a bidder, or is a participant in any active or prospective Bid with respect to any Asset(s).

The Debtors will try to accommodate all reasonable requests from Prospective Bidders for additional information and due diligence access. All due diligence requests shall be directed to Drew Talarico (DTalarico@HL.com) and Marcus Bellows (MBellows@HL.com).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors’ businesses or assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors after consulting with the Consultation Parties.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the applicable acquired Assets prior to making a bid and (y) investigate and/or inspect any documents and the applicable acquired Assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the applicable acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

#### **IV. STALKING HORSE AGREEMENT AND BID PROTECTIONS**

The procedures set forth in this section (the “Stalking Horse Designation Procedures”) shall apply to the designation of any Stalking Horse Bidder, Stalking Horse Agreement and Bid Protections.

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<sup>3</sup> If a member of the Committee submits a Qualifying Bid, the Committee will continue to have consultation and consent rights as set forth in these Bid Procedures; provided that the Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.



Subject to the provisions set forth herein, the Bidding Procedures Order, and in consultation with the Consultation Parties, the Debtors may designate a Stalking Horse Bidder that submits a Qualified Bid (as defined below) acceptable to the Debtors and enter into a Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, **no later than March 17, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

In the event the Debtors select a Stalking Horse Bidder, the Debtors shall provide three (3) calendar days' notice to the Sale Notice Parties, any Prospective Bidder, and all counterparties to the proposed assumed contracts. Absent objection from the Sale Notice Parties, any Prospective Bidder (as defined in the Bidding Procedures), and all counterparties to the proposed assumed contracts within the three (3) day notice period, the Debtors may offer the following Bid Protections to the Stalking Horse Bidder: (i) break-up fees, if any, in an amount not to exceed three percent (3%) of the Qualified Bid and (ii) reimbursement of expenses, if any, for documented, actual and necessary expenses incurred by any Stalking Horse Bidder(s) in connection with the submitting its Qualified Bid(s) in an aggregate amount not to exceed \$400,000.00 (collectively, the "Bid Protections").

With such consent, the Debtors shall be authorized to submit a proposed order to the Court under certification of counsel that approves such Bid Protections (the "Stalking Horse Order"). The Debtors will cause a copy of a notice of entry of the Stalking Horse Order to be served on the Sale Notice Parties, all counterparties to the proposed assumed contracts and any Prospective Bidder.

If any Consultation Party or the Office of the United States Trustee (the "U.S. Trustee") object to the proposed Bid Protections and entry of the Stalking Horse Order, the Debtors shall be authorized to file a notice seeking an expedited hearing on not less than three (3) calendar days' notice (the "Stalking Horse Hearing"). All parties-in-interest shall have the right at the Stalking Horse Hearing to object to the Debtors' entry into a Stalking Horse Agreement on any grounds, including to object to the Bid Protections and the form of Stalking Horse Order. If the Debtors, in consultation with the other Consultation Parties, determine that the Bid Protections must exceed the amounts set forth herein, the Debtors shall request that the Court hold a hearing on the approval of any such greater Bid Protections on an expedited basis.

Any Stalking Horse Agreement executed by the Debtors and the transactions contemplated thereby will be deemed a Qualified Bid (as defined below) for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement executed by the Debtors will be deemed to be a Qualified Bidder (as defined below).

Other than as provided by order of the Court, no party submitting a Bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections for any Stalking Horse Bidder. Any substantial contribution claims by any bidder are deemed waived.

## **V. BID DEADLINE**

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.C below) on or before

**April 3, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtors shall (subject to Section XI.C hereof) promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

## **VI. BID REQUIREMENTS**

### **A. Qualified Bid Requirements**

To qualify as a “Qualified Bid,” a bid must be in writing and satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors, any Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).
2. Purchased Assets. A Qualified Bid must identify the following:
  - a. the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the “Contracts”) that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed Sale; and
  - b. the liabilities, if any, to be assumed, including any debt to be assumed.
3. Consideration. Each Qualified Bid must include a statement confirming that the bid is based on an all-cash offer, or if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in evaluating the bid.
4. Minimum Bid for Assets. If a Stalking Horse Bidder has been designated, each bid that is not a Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties, that is greater than or equal to the sum of (a) the value offered under the Stalking Horse Agreement, plus (b) the amount of the Bid Protections, plus (c) \$100,000 (collectively, the “Minimum Bid Amount”).

Any subsequent bid made by the Stalking Horse Bidder shall be deemed to have been made in an amount equal to such subsequent bid plus the Break-Up Fee and the Expense Reimbursement, to the extent provided for in the Stalking Horse Agreement.

If the value of a bid relative to the Stalking Horse Bid includes non-cash components (such as fewer contingencies than are in such Stalking Horse Agreement), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in better evaluating the competing bid. The Debtors, in consultation with their advisors and the Consultation Parties, reserve the right in their reasonable discretion to ascribe a value to any non-cash components of competing bids and the Stalking Horse Bid.

If a Stalking Horse Bidder is not designated pursuant to the Stalking Horse Designation Procedures, the Debtors, in consultation with the Consultation Parties, may set a minimum bid requirement, which shall be considered the Minimum Bid Amount for all purposes hereunder. In such case, the Debtors will file a notice on the docket identifying the Minimum Bid Amount **no later than March 20, 2025 at 5:00 p.m. (prevailing Eastern Time)** and shall serve such notice on any known potential bidder.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a “Proposed Asset Purchase Agreement”). A Proposed Asset Purchase Agreement shall be (a) duly authorized and executed; (b) based on, and marked against the form asset purchase agreement attached to the Bidding Procedures as Exhibit A (the “Form APA”) or, if a Stalking Horse Bidder has been designated, the Stalking Horse Agreement, to reflect the proposed sale transaction and to show any other proposed modifications to the Form APA or Stalking Horse Agreement, as applicable; (c) specify the proposed purchase price for the Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale transaction.
6. Proposed Sale Order. A Qualified Bid must include a proposed sale order (each, a “Proposed Sale Order”), and be marked against the proposed Sale Order, which the Debtors will file with the Court in advance of the Bid Deadline.
7. Financial Information. A Qualified Bid must include the following:

- a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order;
  - b. sufficient evidence, as determined by the Debtors in their reasonable discretion, to determine that the Prospective Bidder has, or will obtain, the financial wherewithal to consummate the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; and
  - c. Adequate Assurance Information (as defined in Section VI.A.9 below) with respect to any Contracts included or that may be included in the Prospective Bidder's bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee.
8. Good Faith Deposit. Each Qualified Bid, including any Stalking Horse Bid, must be accompanied by a good faith deposit (each, a "Good Faith Deposit") in the form of cash in an amount equal to ten percent (10%) of the proposed purchase price for the Assets. The Good Faith Deposits shall be deposited **no later than April 3, 2025 at 4:00 pm (prevailing Eastern Time)** with an escrow agent selected by the Debtors (the "Escrow Agent") and held in escrow until ten (10) business days after the conclusion of the Auction, except for the Good Faith Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder, and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of these Bidding Procedures.
9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's (or any other relevant assignee's) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's (or any other relevant assignee's) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information evidencing the Prospective Bidder's (or any other relevant assignee's) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns, and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the "Adequate Assurance Information").

All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Contract counterparties (“Counterparties”).

10. Representations and Warranties (As-Is, Where-Is). Each Qualified Bid must include a written acknowledgement and representation that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Qualified Bid, (b) the Prospective Bidder has relied solely upon its own or its advisors’ independent review, investigation, and/or inspection of any documents and/or the Assets in making its Qualified Bid, (c) the Prospective Bidder did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Prospective Bidder’s Proposed Asset Purchase Agreement, and (d) the Assets will be conveyed “as is, where is, with all faults,” with limited representations and warranties, and no indemnification or guarantees by the Debtors.
11. Authorization. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of any bid for the Assets, participation in the Auction, and closing of the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; or, (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed sale transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.
12. Other Requirements. A Qualified Bid must:
  - a. state that the Prospective Bidder agrees to serve as a backup bidder (a “Backup Bidder”) if such bidder’s Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the Assets (each such bid, a “Backup Bid”);
  - b. state that the bid represents a binding, good-faith, and *bona fide* offer to purchase the Assets and is not subject to or conditioned on any further due diligence, and is irrevocable (i) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined in Section VII.C.2 below);

- c. for any bidder other than a Stalking Horse Bidder, state and acknowledge that the Prospective Bidder shall not be entitled to any bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process;
- d. state that the Prospective Bidder is committed to closing the sale transaction contemplated in its bid as soon as practicable (and in no event later than April 11, 2025);
- e. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Process;
- f. not contain any financing contingencies of any kind;
- g. state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees and, if so, to whom;
- h. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture, or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors;
- i. include a covenant to comply with the terms of these Bidding Procedures and the Bidding Procedures Order; and
- j. contain such other information as may be reasonably requested by the Debtors.

## **B. Bid Review Process**

The Debtors, in consultation with the Consultation Parties, will evaluate bids and, based upon their evaluation of the content of each bid, the Debtors may, as they deem appropriate in their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, engage in negotiations with any Prospective Bidder for the purposes of (i) curing any deficiencies in a bid that prevents them from constituting a Qualified Bid, (ii) improving the terms of the Prospective Bidder's bid, or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

In evaluating a bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including (i) the amount of the proposed purchase price and proposed form of consideration ; (ii) any Assets included in, or excluded from, the bid, including any Contracts to be assumed and assigned; (iii) the value to be provided to the Debtors under the bid, including the net economic effect on the Debtors' estates; (iv) any benefits to the Debtors'

estates from any assumption or waiver of liabilities contemplated by the bid; (v) the structure of the proposed sale transaction and any attendant execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and general financial wherewithal to meet all commitments; and any required governmental approvals; and (vi) the impact of the proposed sale transaction on the Debtors' employees, trade creditors, landlords, and any other parties-in-interest.

The Debtors will evaluate timely bids and will (i) after consultation with the Consultation Parties (subject to Section XI.C hereof), determine which bids qualify as Qualified Bids and which Qualified Bid has been selected as the Baseline Bid and (ii) notify bidders whether they are Qualified Bidders as soon as commercially reasonable following the Bid Deadline. A Qualified Bidder shall not (without the consent of the Debtors after consultation with the Consultation Parties), modify, amend, or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the Qualified Bid, as determined by the Debtors in their reasonable business judgment. Any Consultation Party that submits a bid shall immediately upon submission of such bid cease to be a Consultation Party, *provided, however*, that upon written notice (which may be via email) by a Committee member to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, such Committee member's (as applicable) rights as a Consultation Party (directly or as a member of the Committee) shall be restored.

### **C. Qualified Bidders**

Any bidder that submits a Qualified Bid as set forth in Sections V and VI.A above will qualify as a "Qualified Bidder."

The Debtors may, after consultation with the Consultation Parties, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, amend or waive the conditions precedent to qualifying as a Qualified Bidder.

### **D. Bid Protections**

Other than any Bid Protections approved by the Court in connection with the Stalking Horse Bid, if any, no bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or the Sale process.

## **VII. THE AUCTION**

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If the Stalking Horse Bid is the only Qualified Bid received in respect of the Assets, the Debtors will not conduct an Auction for the Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing. If the Debtors, after consultation with the Consultation Parties, determine not to hold an Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice containing the following information, as applicable: (a) a statement that the Auction for the Assets has been canceled;

(b) the identity of the Successful Bidder; (c) a copy of the Successful Bid or a summary of the material terms of such bid or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if required, will be conducted on **April 7, 2025, at 10:00 a.m. (prevailing Eastern Time)**, either (a) at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, New York 10167, (b) at some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties (subject to Section XI.C hereof). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties (subject to Section XI.C hereof), and will cause publication of such change to occur on the Epiq Website as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

If held, the Auction proceedings will be transcribed and/or video recorded.

#### **A. Participants and Attendees**

Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in consultation with the Consultation Parties, and in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. Subject to the Auction procedures set forth in Section VII.B, all Qualified Bidders and the Consultation Parties (including the members of the Committee and the advisors to the Committee and its members) are permitted to attend the Auction; *provided* that the Debtors may, in their reasonable discretion after consultation with the Consultation Parties, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets, and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction is an irrevocable, binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including any Stalking Horse Bidder, Successful Bidder, and Backup Bidder) shall be deemed to have (i) agreed that all proceedings in the Court related to these Bidding Procedures, the Auction, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction are core proceedings as described in 28 U.S.C. § 157; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction; and (iii) consented to the entry of a final order or judgment by the Court in connection with any



disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document relating directly to the sale transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

## **B. Auction Procedures**

The Auction shall be governed by the following procedures, subject to the Debtors' rights to modify such procedures in their reasonable business judgment (in each case, in a manner consistent with their fiduciary duties and in consultation with the Consultation Parties (subject to Section XI.C hereof)):

1. Baseline Bids. Prior to the commencement of the Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties (subject to Section XI.C hereof)) the highest or otherwise best Qualified Bid submitted for the Assets (such Qualified Bid, a "Baseline Bid"). Bidding at the Auction shall commence at the amount of the Baseline Bid. **No later than April 6, 2025 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors will provide all Qualified Bidders with (a) a notice identifying which Qualified Bid is the Baseline Bid; and (b) a copy of each Qualified Bid.
2. Minimum Overbid. Bidding shall commence at the Baseline Bid. The first overbid at the Auction shall be in an amount not less than the amount of the Baseline Bid (plus the Bid Protections if the Stalking Horse Bid is the Baseline Bid) plus \$100,000 (the "Minimum Overbid"). At each round of bidding, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round. During the Auction, the Debtors may, in their reasonable discretion, after consultation with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; (b) any additional costs that may be imposed on the Debtors; and (c) any

liabilities waived against the estate. Any subsequent bid made by any Stalking Horse Bidder shall be deemed to have been made in an amount equal to such subsequent bid plus the Bid Protections, to the extent provided for in the Stalking Horse Agreement.

3. Leading Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce, after consultation with the Consultation Parties, the bid that they believe to be the highest or otherwise best offer for the Assets (such bid, a “Leading Bid”) and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the material terms of the Leading Bid.

The Auction will include open bidding in the presence of all other Qualified Bidders. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right to determine, in their reasonable business judgment after consultation with the Consultation Parties, which bid is the highest or otherwise best bid with respect to the Assets and, after consultation with the Consultation Parties (subject to Section X.I.C hereof), reject, at any time, without liability (but only in the absence of gross negligence or willful misconduct), any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bidding Procedures, any order of the Court, or the best interests of the Debtors and their estates.

### **C. Auction Results**

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best bid (such bid, including the Stalking Horse Bid, if no additional Qualified Bids are received and no Auction conducted, a “Successful Bid”) and (b) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (such bidder, including the Stalking Horse Bidder if no Qualified Bids are received and no Auction conducted, a “Successful Bidder”). Following the conclusion of the Auction, the Debtors shall serve a notice of the Successful Bidder, which notice shall include a copy of the Successful Bid or a summary of the material terms of such bid or

provide instructions for accessing the Successful Bid free of charge from the Epiq Website.

2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid is the Backup Bid; and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Except as may otherwise be provided in any Stalking Horse Agreement, a Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of the sale transaction with the Successful Bidder for the Assets and (b) 30 days after the Sale Hearing (such date, the “Backup Bid Expiration Date”). If the sale transaction with the Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the Assets and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; *provided* that the Debtors may, in their reasonable business judgment (after providing notice to the Sale Notice Parties and after consultation with the Consultation Parties), elect not to pursue the sale transaction contemplated by the Backup Bid.

3. Notice of Auction Results. Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which will (a) identify each Successful Bidder and the Backup Bidder; (b) include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the Epiq Website; and (c) set forth the Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

#### **D. Disposition of Good Faith Deposit**

1. Prospective Bidders. Within five business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders, the Escrow Agent shall return to each Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed by the Debtors, such Prospective Bidder’s Good Faith Deposit. Upon the authorized return of a Prospective Bidder’s Good Faith Deposit in accordance with this Section

VII.D, the bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.

2. Qualified Bidders.

- a. Forfeiture of Good Faith Deposit. The Good Faith Deposit of a Qualified Bidder shall be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures. The Debtors and their estates shall be entitled to retain the Qualified Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder's failure to adhere to the terms of these Bidding Procedures and/or the relevant Qualified Bid. If a Qualified Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Qualified Bid.
- b. Return of Good Faith Deposit. With the exception of the Good Faith Deposits of the Successful Bidder and the Backup Bidder, the Escrow Agent shall return to any other Qualified Bidder the Qualified Bidder's Good Faith Deposit, within 10 business days after the conclusion of the Auction for the Assets.
- c. Backup Bidder. Unless the Backup Bidder becomes the Successful Bidder, the Escrow Agent shall return the Backup Bidder's Good Faith deposit, within 10 business days after the occurrence of the applicable Backup Bid Expiration Date; *provided, however*, if the Backup Bidder becomes the Successful Bidder, its Good Faith Deposit shall be forfeited if it fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Backup Bidder, and the Debtors and their estates shall be entitled to retain the Backup Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Backup Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Backup

Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Backup Bid.

- d. Successful Bidder. At the closing of the sale transaction, the Successful Bidder shall be entitled to a credit against the purchase price in the amount of the Successful Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Successful Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the Successful Bid.

### **VIII. SALE HEARING**

The Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to Court approval. The hearing to approve the sale transaction consummated in accordance with these Bidding Procedures (except in the case of the sale transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) shall take place on **April 10, 2025 at 10:00 a.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable Thomas M. Horan United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801, 5th floor, courtroom #5.

At the Sale Hearing, the Debtors will seek entry of an order (a "Sale Order") approving, among other things, the sale of the Assets to the Stalking Horse Bidder or Successful Bidder(s).

The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties, adjourn or reschedule the Sale Hearing by filing a notice or by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing.

The Debtors' presentation to the Court for approval of a selected Qualified Bid as a Successful Bid does not bind the Debtors to such bid. The Debtors will be bound to the Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

## **IX. RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

The Debtors reserve the right to, in their reasonable business judgment, after consultation with the Consultation Parties (subject to Section XI.C hereof) and in a manner consistent with their fiduciary duties and applicable law, (i) modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or (ii) otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures or the Bidding Procedures Order.

## **X. NOTICING**

### **A. Bid Notice Parties**

Qualified Bids must be submitted in writing to the following parties (collectively, the “Bid Notice Parties”):

- Proposed counsel for the Debtors: (i) Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: Joshua D. Morse (joshua.morse@pillsburylaw.com), and Andrew V. Alfano (andrew.alfano@pillsburylaw.com)), and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com));
- The Debtors’ investment banker: Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, New York 10167 (Attn: Drew Talarico (DTalarico@HL.com) and Marcus Bellows (MBellows@HL.com)); and
- Proposed counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Committee”): (i) Morrison & Foerster LLP, 250 West 55th Street, New York NY 10019-9601 (Attn: Doug Mannal (dmannal@mofo.com), Lorenzo Marinuzzi (lmarinuzzi@mofo.com), and Ben Butterfield (bbutterfield@mofo.com)) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801-1494 (Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (BKeilson@morrisjames.com)).

### **B. Sale Notice Parties**

The “Sale Notice Parties” shall include the following persons and entities:

- the Consultation Parties (as applicable);
- counsel to any Stalking Horse Bidder;

- all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors);
- all relevant non-debtor parties (each, a “Counterparty”) to any Contract that may be assumed or rejected in connection with the sale transaction;
- all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);
- any governmental authority known to have a claim against the Debtors in the Chapter 11 Cases;
- the U.S. Trustee;
- all applicable federal, state, and local taxing authorities, including the Internal Revenue Service;
- the United States Securities and Exchange Commission;
- the United States Attorney’s Office for the District of Delaware;
- United States Attorney General’s Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- the Antitrust Division of the United States Department of Justice;
- the Federal Trade Commission;
- proposed counsel for the Committee;
- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- all other parties as directed by the Court.

**C. Sale Notice and Publication Notice**

No later than **two business days after the entry of the Bidding Procedures Order**, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website a notice (the “Sale Notice”) setting forth (i) a description of the Assets available for sale in accordance with these Bidding Procedures; (ii) the date, time, and location of the Auction and Sale Hearing; (iii) the Sale Objection Deadline and Supplemental Sale Objection Deadline (each as defined in Section X.D below) and the procedures for filing such objections; and, (iv) if applicable, a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Bid Protections to be provided thereunder, as of the date of the Sale Notice.

As soon as practicable but no later than five (5) business days after the entry of this Order, the Debtors shall post the Sale Notice on the Epiq Website and cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of either the Wall Street Journal, USA Today, The New York Times (national edition) or another publication of similar distribution (the “Publication Notice”).

#### **D. Sale Objections and Supplemental Sale Objections**

Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a “Sale Objection”) shall, by no later than **April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”), be filed with Court and served on the following parties (collectively, the “Objection Notice Parties”):

- Proposed counsel for the Debtors: (i) Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: Joshua D. Morse (joshua.morse@pillsburylaw.com), and Andrew V. Alfano (andrew.alfano@pillsburylaw.com), and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com));
- Proposed counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Committee”): (i) Morrison & Foerster LLP, 250 West 55th Street, New York NY 10019-9601 (Attn: Doug Mannal (dmannal@mofo.com), Lorenzo Marinuzzi (lmarinuzzi@mofo.com), and Ben Butterfield (bbutterfield@mofo.com)) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801-1494 (Attn: Eric J. Monzo (emonzo@morrisesjames.com) and Brya M. Keilson (BKeilson@morrisesjames.com));
- the U.S. Trustee;
- if applicable, counsel for the relevant Successful Bidder; and
- if applicable, counsel for any relevant Backup Bidder(s).

Following service of the Notice of Auction Results, Sale Notice Parties may object solely with respect to the conduct of the Auction and/or the Successful Bidder or Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”) by **April 8, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”).



**E. Notices Regarding Assumption and Assignment of Contracts**

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

**XI. CONSULTATION BY THE DEBTORS**

**A.** Throughout the Sale Process, the Debtors and their advisors will consult with the Consultation Parties as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors' business judgment.

**B.** The Debtors shall consult with the Consultation Parties in good faith regarding the sale process, any diligence and other information requested by the Consultation Parties, and the Debtors will provide to the Consultation Parties reports concerning the sale process, including parties contacted, buyer feedback, copies of all letters of intent, drafts of definitive agreements and updates on proposals. For the avoidance of doubt, and without limitation, the Debtors shall consult with the Consultation Parties on the selection of the Baseline Bid, how the Auction is conducted, any additional Auction procedures, adjourning the Auction, and selecting the Successful Bidder and the Backup Bidder.

**C. Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time.** If a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party; *provided* that the Committee excludes the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding committee member; *provided further* that, upon written notice by such Committee member (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, such Committee member's rights as a Consultation Party (as a Committee member) shall be restored.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures or the Bidding Procedures Order shall not in any way limit the Debtors' discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

**Exhibit A**

**Form APA**

**Exhibit 2**

**Sale Notice**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(Jointly Administered)

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On February 19, 2025, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. 15] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) <sup>2</sup> to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale; and (vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

VII.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On March 7, 2025, the Court entered the Bidding Procedures Order [Docket No. [ ]].

### **ASSETS FOR SALE**

The Debtors intend to sell all, substantially all, or a portion of their Assets.

A Prospective Bidder (as defined in Section III of the Bidding Procedures) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the Debtors' investment banker at Houlihan Lokey Capital, Inc. ("Houlihan Lokey"):

**Houlihan Lokey Capital, Inc.**  
245 Park Avenue, 20th Floor  
New York, NY 10167  
Attn: Drew M. Talarico and Marcus Bellows  
DTalarico@HL.com | (212) 497-4240  
MBellows@HL.com | (212) 497-4214

### **KEY DATES AND DEADLINES**

#### **A. Bid Deadline**

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.A of the Bidding Procedures) **on or before April 3, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

The Qualified Bid requirements are set forth in Section VI.A of the Bidding Procedures.

#### **B. Stalking Horse Bidder Designation**

The Debtors may designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement **no later than March 17, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

#### **C. Auction**

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an

Auction for the Assets. If any Stalking Horse Bid is the only Qualified Bid received in respect of the Assets subject to such Stalking Horse Bid, the Debtors will not conduct an Auction for such applicable Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

The Auction, if required, will be conducted on **April 7, 2025, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, (ii) some other physical location to be determined by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtors. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these chapter 11 cases, located at <https://dm.epiq11.com/Nikola> (the "Epiq Website") as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website, a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder and Backup Bidder(s); (ii) either include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids or provide instructions for accessing the Successful Bid and the Backup Bid free of charge from the Epiq Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

If the Debtors determine, after consultation with the Consultation Parties, not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice containing the following information (as applicable): (i) a statement that the Auction for the relevant Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) either include a copy of the Successful Bid or a summary of the material terms of such bid or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (iv) the date, time, and location of the Sale Hearing.

### C. Objection Deadlines

1. Sale Objection Deadline. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder (in each case other than the Stalking Horse Bidder), all objections to a sale of the Assets, including (a) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (b) entry of any Sale Order must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) filed with the Court by **no later than April 4, 2025 at 4:00 p.m. (prevailing Eastern Time)** and served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).
2. Cure Objection Deadline. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.
3. Supplemental Sale Objection Deadline. Following service of the Notice of Auction Results, parties may object solely with respect to the particular terms of a proposed Sale or the Successful Bid or Backup Bid (in each case, if such bidder is not the Stalking Horse Bidder). Any Supplemental Sale Objection must be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) filed with the Court by **no later April 8, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline") and served on the Objection Notice Parties.
4. Adequate Assurance Objection. Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's, proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection" and, together with a Cure Objection, a "Contract Objection"), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 8, 2025 at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

### D. Notice of Auction Results

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website located at <https://dm.epiq11.com/Nikola>, a Notice of Auction

Results. The Notice of Auction Results will (a) identify each Successful Bidder and each Backup Bidder, as applicable; (b) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (c) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**E. Sale Hearing**

The Sale Hearing shall take place on **April 10, 2025 at 10:00 a.m. (prevailing Eastern Time)** before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801 5th floor, courtroom #5. The Debtors may adjourn the Sale Hearing may by filing a notice or by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing

**RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

The Debtors reserve the right to, in their reasonable business judgment and after consultation with the Consultation Parties (subject to Section XI.C of, as defined in, the Bidding Procedures) in a manner consistent with their fiduciary duties and applicable law, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures or the Bidding Procedures Order.

**ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website located at <https://dm.epiq11.com/Nikola>.

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS,**



**INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE  
BANKRUPTCY CODE OR THE TERMS OF THE STALKING HORSE AGREEMENT  
OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.**

Dated: March \_\_, 2025  
Wilmington, Delaware

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Jonathan R. Doolittle, Esq.  
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-and-

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Respectfully submitted,

/s/ DRAFT

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sforshay@potteranderson.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit 3**

**Assumption and Assignment Notice**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(Jointly Administered)

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL ASSETS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On February 19, 2025, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. 15] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) <sup>2</sup> to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale; and (vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VII.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On March 7, 2025, the Court entered the Bidding Procedures Order [Docket No. [ ]].

**You are receiving this Notice because you may be a Counterparty to a Contract of the Debtor that may be assumed and assigned to the Successful Bidder for the Debtors' Assets.**

### **CURE COSTS**

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with the Sale with the Successful Bidder at the Auction, seek to assume and assign to the Successful Bidder certain of their Contracts. Each of the Contracts that potentially could be assumed and assigned in connection with the Sale, together with the Debtors' calculation of Cure Costs with respect to such Contracts, is set forth on Schedule 1 hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission by the Debtors, any Stalking Horse Bidder, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

In addition, to the extent that any of the Cure Costs set forth on Schedule 1 do not reflect (i) postpetition payments that have been made by the Debtors in respect of applicable Cure Costs or (ii) any payments that are made by the Debtors in respect of such Cure Costs after the filing of this Notice, the respective amounts required to be paid to cure any existing defaults under the applicable Contracts shall be reduced by any such corresponding postpetition payments, and the Debtors reserve their rights to update the Cure Costs set forth on Schedule 1 accordingly, either by filing a supplemental notice with the Court or by written notice to the applicable Counterparty.

### **CONTRACT OBJECTIONS**

#### **A. Contract Objection Deadline**

Any Counterparty that wishes to object to the Debtors' proposed Cure Costs or the assumption and assignment on any basis (each such objection, a "Contract Objection") must file with the Court by **no later than April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** and serve on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) its Contract Objection, which must be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof.

#### **B. Resolution of Contract Objections**

Pursuant to the Bidding Procedures Order, the Debtors or the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Contract

Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Contract Objection at a hearing scheduled pursuant to the following paragraph. If a Contract Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the Sale, the Debtors and the Successful Bidder may determine that any Contract subject to such resolved Contract Objection no longer will be assumed and assigned.

### C. Adjourned Cure Objections

If a timely filed Contract Objection cannot otherwise be resolved by the parties, the Contract Objection may be heard at the Sale Hearing, or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Contract Objection (each such Contract Objection, an “Adjourned Contract Objection”). Any Contract that is the subject of such Adjourned Contract Objection that is solely with regards to Cure Costs may, at the election of the Successful Bidder, and subject to the Debtors’ rights set forth in the Bidding Procedures Order, be assumed and assigned to the Successful Bidder prior to the resolution of such objection as of the closing date of the Sale, so long as the Debtors or Successful Bidder, as applicable, (i) pay any undisputed Cure Costs on or before the closing date of the sale of the Assets ;and (ii) appropriately reserve funding for the disputed portion of the Cure Costs, if any, pending resolution of the dispute.

**IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CONTRACT OBJECTION, THE COUNTERPARTY SHALL BE (i) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO THE SUCCESSFUL BIDDER, (ii) PROHIBITED FROM ASSERTING THAT THE SUCCESSFUL BIDDER FAILED TO PROVIDE ADEQUATE ASSURANCE, AND (iii) FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE ASSUMPTION AND ASSIGNMENT OF THE APPLICABLE CONTRACT, THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT, OR ADEQUATE ASSURANCE OF FUTURE PERFORMANCE, AND THE CURE COSTS SET FORTH ON SCHEDULE 1 HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE CONTRACT AND SATISFY THE REQUIREMENTS OF SECTION 365(b) OF THE BANKRUPTCY CODE, AND THE COUNTERPARTY TO THE CONTRACT SHALL BE DEEMED BOUND BY AND TO HAVE CONSENTED TO THE CURE COSTS. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.**

## **NOTICE OF AUCTION RESULTS**

The Auction, if required, will be conducted on **April 7, 2025, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, (ii) at some other physical location to be determined by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtor. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the Epiq Website as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these chapter 11 cases, located at <https://dm.epiq11.com/Nikola> (the "Epiq Website") a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder(s) and Backup Bidder(s); (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

## **ADEQUATE ASSURANCE OBJECTIONS**

### **A. Adequate Assurance Objection Deadline**

Any Counterparty to a Contract that wishes to object to the proposed assumption and assignment of a Contract, the subject of which objection is the Successful Bidder's (or any other relevant assignee's but not the Stalking Horse Bidder's) proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection"), must file with the Court and serve on the Objection Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and

include any appropriate documentation in support thereof, by **April 8, 2025 at 4:00 p.m. (prevailing Eastern Time)**.

**B. Resolution of Adequate Assurance Objections**

Pursuant to the Bidding Procedures Order, the Debtors, the Successful Bidder and the objecting Counterparty must first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

**IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY SHALL FOREVER BE BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND/OR ASSIGNMENT OF THE APPLICABLE CONTRACT WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.**

**SALE HEARING**

The Sale Hearing shall take place on **April 10, 2025 at 10:00 a.m. (prevailing Eastern Time)** before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801 5th floor, courtroom #5.

**ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website.

Dated: March \_\_, 2025  
Wilmington, Delaware

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Respectfully submitted,

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*Proposed Counsel to the Debtors and Debtors in Possession*



**Schedule 1**

**EXHIBIT B**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

(~~Joint Administration Requested~~Jointly Administered)

Re: Docket No. ~~—~~ 15

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO DESIGNATE ONE OR MORE STALKING HORSE BIDDERS, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts*

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors' headquarters are located at 4141 East Broadway

*and Unexpired Leases, and (C) Granting Related Relief* [Docket No. [—15](#)] (the “Motion”)<sup>2</sup> filed by the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); and the Court having reviewed the Motion, the First Day Declaration [Docket No. [—18](#)], and the Bidding Procedures Declaration [Docket No. [—16](#)]; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on   [March 7, 2025](#), to consider certain of the relief requested in the Motion (the “Bidding Procedures Hearing”); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The predicates for the relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. Venue of these cases is proper in this district under 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the Bidding Procedures Hearing, the dates and objection deadlines contained in this Order and the Bidding Procedures, and the proposed entry of this

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Road, Phoenix, AZ 85040.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

Order was sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules. Accordingly, no other or further notice of the Motion, the Bidding Procedures Hearing, or this Order need be provided.

D. The bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”) and incorporated herein by reference as if fully set forth in this Order, are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors’ assets (the “Assets”).

E. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

F. The procedures set forth herein regarding the Debtors’ assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with a sale of the Assets (the “Assumption and Assignment Procedures”) are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve the relief requested in the Motion, including, without limitation, (i) the Bidding Procedures (including the Stalking Horse Designation Procedures); (ii) the form and manner of notice of the Bidding Procedures, the auction of the Assets (the “Auction”), and the final hearing to consider approval of a sale of the Assets (the “Sale Hearing”), substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”); (iii) the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a “Counterparty”) of (a) the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Costs”) and (b) certain other information regarding the potential assumption and assignment of

Contracts in connection with the sale of the Assets, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (iv) the Assumption and Assignment Procedures. Such good and sufficient business reasons, which were set forth in the Motion and on the record at the Bidding Procedures Hearing, including the First Day Declaration and the Bidding Procedures Declaration are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

H. The Bidding Procedures are reasonably designed to promote active bidding at and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

I. The Debtors are authorized to seek payment of the break-up fee and expense reimbursement comprising the Bid Protections pursuant to the procedures set forth in this Order and in compliance with the Stalking Horse Designation Procedures. In the event the Debtors select a Stalking Horse Bidder, the Debtors will provide three (3) calendar days’ notice by serving a copy of the proposed Stalking Horse Notice on (a) the Consultation Parties; (b) the U.S. Trustee; (c) any Prospective Bidder (as defined in the Bidding Procedures); (d) all counterparties to the proposed assumed contracts; and (e) the ~~(d)~~ Sale Notice Parties as defined in the Bidding Procedures. ~~The Bid Protections, if utilized, and to the extent payable under any Stalking Horse Bidder’s Proposed Asset Purchase Agreement, (a)(x) are actual and necessary costs and expenses of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, and (y) shall be treated as allowed administrative claims against the Debtors’ estates pursuant to sections 105(a) of the Bankruptcy Code, are commensurate to the real and material benefits conferred upon the Debtors’ estates by the Stalking Horse Bidders, and (e) are fair, reasonable and appropriate, including in light of the size~~

~~and nature of the sale transaction, the necessity to announce a sale transaction for the Assets, and the efforts that have been and will be expended by the Stalking Horse Bidders. The Bid Protections are a material inducement for, and condition of, each Stalking Horse Bidder's execution of the applicable Stalking Horse Bidder's Proposed Asset Purchase Agreement. Unless it is assured that the Bid Protections will be available, the Stalking Horse Bidders are unwilling to remain obligated to consummate the sale transaction or otherwise be bound under its Stalking Horse Bidder's Proposed Asset Purchase Agreement, (including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).~~

J. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties-in-interest.

L. The Sale Notice, the Publication Notice (as defined below), and the Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Contracts in connection therewith shall be required.

K. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable

pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the relief granted in this Order that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included therein, are hereby overruled, and denied on the merits with prejudice.

**A. The Timeline for the Sale**

3. The Debtors are authorized to proceed with the sale ~~transaction~~process in accordance with the Bidding Procedures and are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

<b>Two business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Sale Notice
<b>Three business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Assumption and Assignment Notice
<b>Within Five business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter</b>	Deadline to publish Publication Notice
<b>March <del>10</del><u>17</u>, 2025, at 4:00 p.m. (ET)</b>	Deadline for Debtors to designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement
<b><del>March 27</del><u>April 3</u>, 2025, at 4:00 p.m. (ET)</b>	Bid Deadline
<b><del>March 28</del><u>April 4</u>, 2025, at 4:00 p.m. (ET)</b>	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
<b><del>March 31</del><u>April 7</u>, 2025, at 10:00 a.m. (ET)</b>	Auction (if necessary)



<b>Earlier of five (5) business hours after the conclusion of the Auction and Noon (ET) the calendar day after the conclusion of the Auction</b>	Deadline to file and serve Notice of Auction Results
<b>April 18, 2025 at 4:00 p.m. (ET)</b>	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
<b>12:00 p.m. (ET) one business day before the Sale Hearing</b>	Deadline to reply to any Sale Objections or Supplemental Sale Objections
<b>April 310, 2025 at [<del>•• a/p.m.</del>]10:00 a.m. (ET) (subject to the Court's availability)</b>	Sale Hearing
<b>April 11, 2025</b>	Deadline to consummate approved Sale

## B. The Bidding Procedures

4. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved in their entirety and are incorporated by reference as if fully set forth herein. The Bidding Procedures shall govern the selection of the Stalking Horse Bidder, bids and proceedings related to the Auction and the sale of the Assets. The failure to specifically include or reference a particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right to, following consultation with ~~any~~, and with respect to (ix) and (x) below, with either (a) further order of the Court; or (b) the consent of, the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”) ~~and,~~ which consent shall not be unreasonably withheld, and any other party that the Debtors may reasonably designate with the consent of the Committee, which consent shall not be unreasonably withheld, solely to the extent it is not participating in the Auction as a bidder, or is

a participant in any active or prospective Bid with respect to any Asset(s), ~~and the DIP Lender,~~<sup>2</sup> ~~if any,~~ (collectively, in such capacities if applicable, the “Consultation Parties”):<sup>3</sup> (i) select a Stalking Horse Bidder and provide such Stalking Horse Bidder with Bid Protections; (ii) determine which bidders qualify as “Qualified Bidders,” and which bids qualify as “Qualified Bids;” (iii) make final determinations as to whether the Debtors will conduct ~~an~~ cancel the Auction; (iv) select the Baseline Bid for the Assets; (v) determine the amount of each Minimum Overbid; (vi) determine the highest or otherwise best offer for the Assets (such bid, a “Leading Bid”); (vii) determine which Qualified Bid is the highest or otherwise best bid for the Assets (such Qualified Bid, including the Stalking Horse Bid if no other Qualified Bids are received and no Auction conducted, a “Successful Bid”) and which Qualified Bid is the next highest and otherwise best bid after the Successful Bid for the Assets (such Qualified Bid, a “Backup Bid”); (viii) reject any bid that is (a) inadequate or insufficient; (b) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (c) contrary to the best interests of the Debtors and their estates; (ix) adjourn ~~or cancel~~ the Auction in accordance with the Bidding Procedures; and (x) adjourn the Sale Hearing in accordance with the Bidding Procedures.

6. In accordance with and subject to the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Consultation Parties, to modify the Bidding Procedures, including to (a) extend or waive deadlines or other terms and

<sup>2</sup>. ~~For the avoidance of doubt, nothing herein modifies the general information rights available to the DIP Lender under the DIP Credit Agreement, if any.~~

<sup>3</sup>. ~~Any reference to a consent right of the DIP Lender hereunder shall be a reference to the consent of the DIP Lender under the DIP Documents, as applicable.~~

conditions set forth herein or therein; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders; and (c) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets.

~~7. In connection with the Sale of all or any portion of the Assets, a person or entity holding a perfected security interest in such Assets may seek to credit bid some or all of their claims for their respective collateral (each such bid, a “Credit Bid”) pursuant to section 363(k) of the Bankruptcy Code; provided that the Credit Bid complies with the orders of the Bankruptcy Court. A Credit Bid may only be applied to reduce the cash consideration with respect to the Assets in which the party submitting the Credit Bid holds a security interest. Each person or entity holding a valid, perfected security interest in Assets for which it submits a bid shall be deemed a Qualified Bidder with respect to its right to acquire such Assets by Credit Bid.~~

**B. Stalking Horse Agreement and Bid Protections**

7. ~~8.~~The Stalking Horse Designation Procedures are approved, and the Debtors are authorized to seek approval of a Stalking Horse Agreement with a Stalking Horse Bidder and provide Bid Protections, in accordance with the Stalking Horse Designation Procedures. The Debtors may, in consultation with the Consultation Parties, designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement **no later than March 10~~17~~, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties). For the avoidance of doubt, no Bid Protections are approved upon entry of this Order.

**C. Bid Deadline and Auction**

8. ~~9.~~ Any Prospective Bidder that intends to participate in the Auction must submit in writing to Houlihan Lokey (as defined below) (contact information in Sections I and III of the Bidding Procedures) a Qualified Bid on or before ~~March 27~~ April 3, 2025 at 4:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

9. ~~10.~~ If the Debtors receive more than one Qualified Bid for the Assets, the Debtors shall conduct an Auction for the Assets.

10. ~~11.~~ The Auction, if required, will be conducted on ~~March 31~~ April 7, 2025, at 10:00 a.m. (prevailing Eastern Time), either (a) at the offices of Houlihan Lokey, 245 Park Avenue, 20th Floor, New York, New York 10167, (b) at some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will promptly provide notice (via electronic mail or otherwise) of any change in the date, time, or location of the Auction to Qualified Bidders and the Consultation Parties and will promptly cause publication of such change to occur on the Epiq Website (as defined below). If held, the Auction proceedings shall be transcribed or video recorded.

11. ~~12.~~ If the Debtors determine not to hold an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures), and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the

Debtors' claims and noticing agent in these Chapter 11 Cases, located at <https://dm.epiq11.com/Nikola> (the "Epiq Website"), a notice containing the following information (as applicable): (a) a statement that the Auction has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (d) the date, time, and location of the Sale Hearing.

12. ~~13.~~ Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in consultation with the Consultation Parties, and in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction. Notwithstanding the foregoing, the members of the Committee (subject to the limitations imposed by Paragraph 35 hereof), the advisors for the Committee and its members, and the U.S. Trustee shall be permitted to attend the Auction.

13. ~~14.~~ Each Qualified Bidder participating in the Auction shall confirm in writing on the record that (a) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets; and (b) the Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

14. ~~15.~~ Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the

Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”). The Notice of Auction Results will (a) identify each Successful Bidder and each Backup Bidder, as applicable; (b) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (c) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

#### **D. Sale Noticing and Objection Procedures**

15. ~~16.~~ Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to the sale of the Assets (each, a “Sale Objection”), including (a) any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Successful Bidder, and/or a Backup Bidder (as applicable) and (b) any objection to the entry of any Sale Order shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than ~~March 28~~ April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”); and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).

16. ~~17.~~ Following service of the Notice of Auction Results, parties in interest may file an objection solely with respect to the conduct of the Auction, the Successful Bidder, the Backup Bidder, or the Sale to the Successful Bidder or the Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”). Any

Supplemental Sale Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 18, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”); and (c) served on the Objection Notice Parties.

17. ~~18.~~ Any party who fails to file and serve a timely Sale Objection or Supplemental Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Supplemental Sale Objection to the relief requested in the Motion, or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Successful Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to “consent” to such sale for purposes of section 363(f) of the Bankruptcy Code.

18. ~~19.~~ The Debtors or any other party in interest may file a reply to any Sale Objection or Supplemental Sale Objection, if any, by **no later than 12:00 p.m. (prevailing Eastern Time) one business day before the Sale Hearing.**

19. ~~20.~~ Consummation of the sale of the Assets pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing to (a) approve a sale of all, substantially all, or a portion of the Assets to the Stalking Horse Bidder or another Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held before the Court on **April 310, 2025 at ~~10:00 a.m.~~ 10:00 a.m. (prevailing Eastern Time)**; *provided, that*, the Debtors may seek from the Court an adjournment or rescheduling of the Sale Hearing, consistent with the Bidding Procedures and this Order. At the Sale Hearing, the Debtors will seek Court approval of the Successful Bid(s) and the Backup Bid(s) (if any). Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary

hearing on matters relating to the sale transaction and there will be no further bidding at the Sale Hearing. If the Successful Bidder(s) cannot or refuses to consummate the Sale(s) because of the breach or failure on the part of such Successful Bidder, the Debtors may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Court.

20. ~~21.~~ The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, or the Supplemental Sale Objection Deadline shall be required if the Debtors serve and publish the Sale Notice in the manner provided in the Bidding Procedures and this Order. **By no later than two (2) business days after entry of the Bidding Procedures Order**, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, the Sale Notice.

21. ~~22.~~ Within five (5) business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtors shall post the Sale Notice on the Epiq Website and cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of either the Wall Street Journal, USA Today, The New York Times (national edition) or another publication of similar distribution (the "Publication Notice").

**E. Assumption and Assignment Procedures**



22. ~~23.~~ The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, is approved, and no other or further notice of the Debtors' intention to assume or assign the Contracts or of the Debtors' proposed Cure Costs is necessary or required.

~~24.~~ **By no later than three (3) business days after entry of the Bidding Procedures Order**, the Debtors shall file with the Court, serve on the applicable Counterparties (and counsel, if known), and cause to be published on the Epiq Website, the Assumption and Assignment Notice.

23. ~~25.~~ To the extent the Debtors, at any time after the deadline to file and serve the Assumption and Assignment Notice (i) identify additional Contracts to be assumed and assigned to any Stalking Horse Bidder or other Successful Bidder (the "Additional Contracts"), (ii) remove Contracts from the list of executory contracts and leases proposed to be assumed and assigned in connection with the sale of the Assets, (iii) and/or modify the previously stated Cure Cost associated with any Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a "Supplemental Assumption and Assignment Notice") on each of the counterparties to such Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Additional Contracts as was included in the initial Assumption and Assignment Notice. Any Stalking Horse Bidder or other Successful Bidder may designate Additional Contracts to be assumed and assigned at any time until two (2) ~~Business Days~~business days prior to the Closing Date (as defined in the ~~Stalking Horse Agreement~~Form APA), and may remove Contracts from the list of Contracts at any time until two (2) ~~Business Days~~business days prior to the Sale Hearing; provided, that the Debtors may remove Contracts from the list of Contracts at any time until two (2) business days prior to the Closing Date with

two (2) business days advance written notice to the Committee of such removal. Counterparties to Additional Contracts or that otherwise receive a Supplemental Assumption and Assignment Notice shall have until **4:00 p.m. (prevailing Eastern Time) on the date that is ten (10) days after the filing and service of the Supplemental Assumption and Assignment Notice** by the Debtors to the Counterparty to file a Cure Objection (as defined herein).

24. ~~26.~~ Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than ~~March 28~~ April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties. Notwithstanding anything to the contrary in this Bidding Procedures Order, the rights of all parties are fully reserved with respect to any additional or incremental default that occurs with respect to an executory contract following the filing of the Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice, as applicable, and prior to the effective date of assumption.

25. ~~27.~~ The Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court will make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to this Order. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the sale of the Assets, the Debtors, any Stalking Horse Bidder or, as applicable, the Successful Bidder, may determine, in consultation with the Consultation Parties,

that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned in connection with the sale of the Assets (subject to the terms of the applicable purchase agreement); *provided* that in the case of an unexpired lease of nonresidential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing.

26. ~~28.~~ If a timely Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Cure Objection (each such Cure Objection, an "Adjourned Cure Objection"). An Adjourned Cure Objection may be resolved after the closing date of the sale of the Assets. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the Contract that was the subject of such Adjourned Cure Objection shall, at the election of the Successful Bidder, and subject to the Debtors' rights set forth in paragraph ~~30~~28 of this Order, be deemed assumed and assigned to the Successful Bidder as of the closing date of the sale of the Assets.

27. ~~29.~~ If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the

requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.

28. ~~30.~~ In accordance with the Bidding Procedures, Qualified Bids ([including any Stalking Horse Bid](#)) shall be accompanied by Adequate Assurance Information (as defined in the Bidding Procedures). The Debtors shall promptly provide, upon a Counterparty's request to the Debtors' counsel, the Adequate Assurance Information to any Counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder. Any Adequate Assurance Information provided to a Counterparty shall be provided on a confidential basis unless otherwise agreed by the applicable Qualified Bidder.

29. ~~31.~~ Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's, proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "[Adequate Assurance Objection](#)" and, together with a Cure Objection, a "[Contract Objection](#)"), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than April 18, 2025 at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

30. ~~32.~~ The Debtors, the Successful Bidder, and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale

Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

31. ~~33.~~ If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

~~34. If a Contract Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the sale of the Assets, the Debtors or the Successful Bidder may determine that any Contract subject to such resolved Contract Objection no longer will be assumed and assigned in connection with the sale of the Assets (subject to the terms of the applicable purchase agreement).~~

32. ~~35.~~ If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, (i) the Counterparty shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Contract, (ii) the Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document, (iii) the Counterparty shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without

limitation, with respect to adequate assurance of future performance by the Successful Bidder), (iv) any and all defaults under the Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Assumption and Assignment Notice for such Contract, and the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract, and (v) the Counterparty shall be forever barred from asserting any other claims related to such Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any Sale Order.

33. ~~36.~~ As soon as reasonably practicable after the closing of the sale of the Assets, the Debtors shall file with the Court, serve on the applicable Counterparties, and cause to be published on the Epiq Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder on the closing date of the sale of the Assets.

34. ~~37.~~ The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

**F. Other Related Relief**

35. ~~38.~~ Notwithstanding anything herein or in the Bidding Procedures to the contrary, the Debtors shall not be permitted to modify the consent rights of the Committee or the consultation rights of the Consultation Parties in the Bidding Procedures absent further order of this Court or the consent of any affected Consultation Parties, *provided, however*, that the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time, and *provided, further*, that if a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party and its consent rights, *provided* that the Committee shall exclude the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding Committee member. Notwithstanding anything to the contrary herein, (i) upon written notice (which may be via email) by ~~the DIP Lender, if any, or~~ such Committee member to the Debtors, or express confirmation on the record, if applicable, during the Auction, of its permanent withdrawal as a bidder for the Assets, ~~the DIP Lender's rights and~~ such Committee member's rights, as applicable, as a Consultation Party shall be restored, and (ii) during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder hereunder, such Consultation Party shall no longer be considered a Consultation Party for purposes of the Bidding Procedures and shall only receive the same diligence, information, and notice as all other Qualified Bidders, unless and until such party unequivocally revokes its bid and waives its right to continue in the Auction process. For the avoidance of doubt, once a Committee member becomes a Consultation Party after

withdrawing as a bidder for the Assets, such member shall not be permitted to again become an active bidder for the same Assets.

36. ~~39.~~ All persons and entities that participate in the Auction or bid for the Assets during the Sale Process shall be deemed to have knowingly and voluntarily (a) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

37. Notwithstanding anything contained in the Bidding Procedures to the contrary, the Debtors reserve the right to, in consultation with the Consultation Parties, consider any bid submitted by a landlord for the purchase of one or more of such landlord's own locations, which may include a purchase price composed of a (i) cash component, and (ii) a non-cash component that represents a valid and undisputed "credit" for any unpaid amounts validly due under the lease for such location.

38. ~~40.~~ Nothing in this Order or the Bidding Procedures shall (i) prevent the Debtors from, in the exercise of their fiduciary duties, pursuing or otherwise consummating an alternative transaction or (ii) obligate the Debtors to pursue or consummate any transaction with any Qualified Bidder.



39. ~~41.~~ Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating to the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

40. ~~42.~~ The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

41. ~~43.~~ This Order shall be binding on and inure to the benefit of the Debtors, including any Chapter 7 or Chapter 11 trustee or other fiduciary appointed for the estate of the Debtors.

42. ~~44.~~ This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

43. ~~45.~~ To the extent any of the deadlines set forth in this Order do not comply with the Local Rules or the Bankruptcy Rules, such rules are waived, and the terms of this Order shall govern.

44. [To the extent any provisions of this Order are inconsistent with the Motion or the Bidding Procedures, the terms of this Order shall control.](#)

45. ~~46.~~ This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

**Exhibit 1**

**Bidding Procedures**

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

In re:

Nikola Corp., *et al.*,<sup>41</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

~~(Joint Administration Requested)~~ Jointly Administered

**BIDDING PROCEDURES**

The above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases will use the procedures set forth herein (the “Bidding Procedures”) in connection with a sale or disposition of all, substantially all, or a portion of the Debtors’ assets (the “Assets”).

On February ~~1~~19, 2025, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. ~~—~~15] (the “Motion”). By the Motion, the Debtors sought, among other things, entry of an order approving Bidding Procedures for soliciting bids for an auction (the “Auction”) of, and consummating a sale of, the Assets, as further described herein.

On March ~~1~~7, 2025, the Court entered an *Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction*

<sup>41</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

*and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief [Docket No. [ ]] (the “[Bidding Procedures Order](#)”).<sup>2</sup>*

## **I. ASSETS FOR SALE**

The Debtors intend to sell all, substantially all, or a portion of their Assets. The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court.

A Prospective Bidder (as defined in Section III below) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Parties may submit bids for all or some of the Debtors’ business and assets, including for parts of the Debtors’ business or assets (each, a “[Partial Bid](#)”), which bids may be combined with other Partial Bids or be considered independently and/or together with the liquidation value (as reasonably determined by the Debtors in good faith) of the Debtors’ business or assets that are not the subject of other Partial Bids to be deemed a Qualified Bid.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the following individuals at Houlihan Lokey Capital, Inc. (“[Houlihan Lokey](#)”):

**Houlihan Lokey Capital, Inc.**  
245 Park Avenue, 20th Floor  
New York, NY 10167  
Attn: Drew M. Talarico and Marcus Bellows  
DTalarico@HL.com | (212) 497-4240  
MBellows@HL.com | (212) 497-4214

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in these Bidding Procedures, the Motion, or the [Bidding Procedures](#) Order, as applicable.

**II. KEY DATES AND DEADLINES**

<b>Two business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Sale Notice
<b>Three business days after the entry of the Bidding Procedures Order</b>	Deadline to file and serve Assumption and Assignment Notice
<b>Within Five business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter</b>	Deadline to publish Publication Notice
<b>March <del>10</del><u>17</u>, 2025, at 4:00 p.m. (ET)</b>	Deadline for Debtors to designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement
<b><del>March 27</del><u>April 3</u>, 2025, at 4:00 p.m. (ET)</b>	Bid Deadline
<b><del>March 28</del><u>April 4</u>, 2025, at 4:00 p.m. (ET)</b>	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
<b><del>March 31</del><u>April 7</u>, 2025, at 10:00 a.m. (ET)</b>	Auction (if necessary)
<b>Earlier of five (5) business hours after the conclusion of the Auction and Noon (ET) the calendar day after the conclusion of the Auction</b>	Deadline to file and serve Notice of Auction Results
<b>April <del>18</del><u>19</u>, 2025 at 4:00 p.m. (ET)</b>	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
<b>12:00 p.m. (ET) one business day before the Sale Hearing</b>	Deadline to reply to any Sale Objections or Supplemental Sale Objections
<b>April <del>3</del><u>10</u>, 2025 at [<del>•:• a/p.m.</del>]<u>10:00 a.m.</u> (ET) <b>(subject to the Court's availability)</b></b>	Sale Hearing
<b>April 11, 2025</b>	Deadline to consummate approved Sale

### III. DUE DILIGENCE

Each person or entity that desires to participate in the Auction process (each, a “Prospective Bidder”) must first deliver to Houlihan Lokey (contact information in Section I above and in this Section III) the following:

- documentation identifying the Prospective Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- an executed confidentiality agreement, in form and substance satisfactory to the Debtors;
- a statement and other factual support demonstrating to the Debtors and their advisors, in their ~~sole~~reasonable judgment, that the Prospective Bidder has a *bona fide* interest in purchasing some or all of the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed sale transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of the sale transaction), the adequacy of which the Debtors and their advisors will determine in their ~~sole~~reasonable judgment.

Without the need for any further action, any Stalking Horse Bidder is a Qualified Bidder (as defined in Section VI.C below).

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information contained in the Debtors’ confidential electronic data room (the “Data Room”) allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. Access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

If the Debtors determine, after consultation with the Consultation Parties, that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder. For purposes hereof, the term “Consultation Parties” shall include any Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”)<sup>3</sup> and any other party that the Debtors may reasonably designate with the consent of the Committee, which consent shall not be unreasonably withheld, solely to the extent it is not participating in the Auction as a bidder, or is a participant in any active or prospective Bid with respect to any Asset(s), ~~the DIP Lender,<sup>3</sup> if any, (collectively, in such capacities if applicable, the “Consultation Parties”).~~

The Debtors will try to accommodate all reasonable requests from Prospective Bidders for additional information and due diligence access. All due diligence requests shall be directed to Drew Talarico (DTalarico@HL.com) and Marcus Bellows (MBellows@HL.com).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors’ businesses or assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors after consulting with the Consultation Parties; ~~provided, however, that with respect to any strategic bidders, the Debtors will make reasonable commercial efforts to provide such strategic bidders with the same information provided to the Stalking Horse Bidder.~~

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the applicable acquired Assets prior to making a bid and (y) investigate and/or inspect any documents and the applicable acquired Assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the applicable acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

<sup>3</sup> If a member of the Committee submits a Qualifying Bid, the Committee will continue to have consultation and consent rights as set forth in these Bid Procedures; provided that the Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.

~~<sup>2.</sup> For the avoidance of doubt, nothing herein modifies the general information rights available to the DIP Lender under the DIP Credit Agreement, if any.~~

#### IV. STALKING HORSE AGREEMENT AND BID PROTECTIONS

The procedures set forth in this section (the “Stalking Horse Designation Procedures”) shall apply to the designation of any Stalking Horse Bidder, Stalking Horse Agreement and Bid Protections.

Subject to the provisions set forth herein, the Bidding Procedures Order, and in consultation with the Consultation Parties, the Debtors may designate a Stalking Horse Bidder that submits a Qualified Bid (as defined below) acceptable to the Debtors and enter into a Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, **no later than March 10~~17~~, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

In the event the Debtors select a Stalking Horse Bidder, the Debtors shall provide three (3) calendar days’ notice to the Sale Notice Parties, any Prospective Bidder, and all counterparties to the proposed assumed contracts. Absent objection from the Sale Notice Parties, any Prospective Bidder (as defined in the Bidding Procedures), and all counterparties to the proposed assumed contracts within the three (3) day notice period, the Debtors may offer the following Bid Protections to the Stalking Horse Bidder: (i) break-up fees, if any, in an amount not to exceed three percent (3%) of the Qualified Bid and (ii) reimbursement of expenses, if any, for documented, actual and necessary expenses incurred by any Stalking Horse Bidder(s) in connection with the submitting its Qualified Bid(s) in an aggregate amount not to exceed \$400,000.00 (collectively, the “Bid Protections”).

With such consent, the Debtors shall be authorized to submit a proposed order to the Court under certification of counsel that approves such Bid Protections (the “Stalking Horse Order”). The Debtors will cause a copy of a notice of entry of the Stalking Horse Order to be served on the Sale Notice Parties, all counterparties to the proposed assumed contracts and any Prospective Bidder.

If any Consultation Party or the Office of the United States Trustee (the “U.S. Trustee”) object to the proposed Bid Protections and entry of the Stalking Horse Order, the Debtors shall be authorized to file a notice seeking an expedited hearing on not less than three (3) calendar days’ notice (the “Stalking Horse Hearing”). All parties-in-interest shall have the right at the Stalking Horse Hearing to object to the Debtors’ entry into a Stalking Horse Agreement on any grounds, including to object to the Bid Protections and the form of Stalking Horse Order. If the Debtors, in consultation with the other Consultation Parties, determine that the Bid Protections must exceed the amounts set forth herein, the Debtors shall request that the Court hold a hearing on the approval of any such greater Bid Protections on an expedited basis.

Any Stalking Horse Agreement executed by the Debtors and the transactions contemplated thereby will be deemed a Qualified Bid (as defined below) for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement executed by the Debtors will be deemed to be a Qualified Bidder (as defined below).



Other than as provided by order of the Court, no party submitting a Bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections for any Stalking Horse Bidder. Any substantial contribution claims by any bidder are deemed waived.

## V. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.C below) on or before ~~March 27~~ April 3, 2025 at 4:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”). The Debtors shall (subject to Section XI.C hereof) promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

## VI. BID REQUIREMENTS

### A. Qualified Bid Requirements

To qualify as a “Qualified Bid,” a bid must be in writing and satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors, any Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, ~~the DIP Lender, if any,~~ or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).
2. Purchased Assets. A Qualified Bid must identify the following:
  - a. the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the “Contracts”) that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed Sale; and
  - b. the liabilities, if any, to be assumed, including any debt to be assumed.
- ~~3. Form of Consideration.~~
- a3. Consideration. Each Qualified Bid must include a statement confirming that the bid is based on an all-cash offer, or if a bid includes forms of consideration other than cash, the bidder shall include an analysis or

description of the value of such non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in evaluating the bid.

~~b. Credit Bidding. In connection with the Sale of all or any portion of the Assets, a person or entity holding a perfected security interest in such Assets may seek to credit bid some or all of their claims for their respective collateral (each such bid, a “Credit Bid”) pursuant to section 363(k) of the Bankruptcy Code; provided that the Credit Bid complies with the orders of the Bankruptcy Court. A Credit Bid may only be applied to reduce the cash consideration with respect to the Assets in which the party submitting the Credit Bid holds a security interest. Each person or entity holding a valid, perfected security interest in Assets for which it submits a bid shall be deemed a Qualified Bidder with respect to its right to acquire such Assets by Credit Bid.~~

4. Minimum Bid for Assets. If a Stalking Horse Bidder has been designated, each bid that is not a Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties, that is greater than or equal to the sum of (a) the value offered under the Stalking Horse Agreement, plus (b) the amount of the Bid Protections, plus (c) \$100,000 (collectively, the “Minimum Bid Amount”). Any subsequent bid made by the Stalking Horse Bidder shall be deemed to have been made in an amount equal to such subsequent bid plus the Break-Up Fee and the Expense Reimbursement, to the extent provided for in the Stalking Horse Agreement.

If the value of a bid relative to the Stalking Horse Bid includes non-cash components (such as fewer contingencies than are in such Stalking Horse Agreement), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in better evaluating the competing bid. The Debtors, in consultation with their advisors and the Consultation Parties, reserve the right in their ~~sole~~reasonable discretion to ascribe a value to any non-cash components of competing bids and the Stalking Horse Bid.

If a Stalking Horse Bidder is not designated pursuant to the Stalking Horse Designation Procedures, the Debtors, in consultation with the Consultation Parties, may set a minimum bid requirement, which shall be considered the Minimum Bid Amount for all purposes hereunder. In such case, the Debtors will file a notice on the docket identifying the Minimum Bid Amount **no later than March 13~~20~~20, 2025 at 5:00 p.m. (prevailing Eastern Time)** and shall serve such notice on any known potential bidder.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a “Proposed Asset Purchase Agreement”). A Proposed Asset Purchase Agreement shall be (a) duly authorized and executed; (b) based on, and marked against the form asset purchase agreement attached to the Bidding Procedures as Exhibit A (the “Form APA”) or, if a Stalking Horse Bidder has been designated, the Stalking Horse Agreement, to reflect the proposed sale transaction and to show any other proposed modifications to the Form APA or Stalking Horse Agreement, as applicable; (c) specify the proposed purchase price for the Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale transaction.
6. Proposed Sale Order. A Qualified Bid must include a proposed sale order (each, a “Proposed Sale Order”), and be marked against the proposed Sale Order, which the Debtors will file with the Court in advance of the Bid Deadline.
7. Financial Information. A Qualified Bid must include the following:
  - a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order;
  - b. sufficient evidence, as determined by the Debtors in their ~~sole~~reasonable discretion, to determine that the Prospective Bidder has, or will obtain, the financial wherewithal to consummate the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; and
  - c. Adequate Assurance Information (as defined in Section VI.A.9 below) with respect to any Contracts included or that may be included in the Prospective Bidder’s bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee;
8. Good Faith Deposit. Each Qualified Bid ~~(other than the, including any Stalking Horse Bid)~~, must be accompanied by a good faith deposit (each, a “Good Faith Deposit”) in the form of cash in an amount equal to ten percent (10%) of the proposed purchase price for the Assets. The Good Faith Deposits shall be deposited **no later than ~~March 27~~April 3, 2025**

**at 4:00 pm (prevailing Eastern Time)** with an escrow agent selected by the Debtors (the “Escrow Agent”) and held in escrow until ten (10) business days after the conclusion of the Auction, except for the Good Faith Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder, and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of these Bidding Procedures.

9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder’s (or any other relevant assignee’s) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder’s (or any other relevant assignee’s) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information evidencing the Prospective Bidder’s (or any other relevant assignee’s) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns, and (iv) annual reports; and (b) the Prospective Bidder’s (or any other relevant assignee’s) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the “Adequate Assurance Information”).

All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Contract counterparties (“Counterparties”).

10. Representations and Warranties (As-Is, Where-Is). Each Qualified Bid must include a written acknowledgement and representation that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Qualified Bid, (b) the Prospective Bidder has relied solely upon its own or its advisors’ independent review, investigation, and/or inspection of any documents and/or the Assets in making its Qualified Bid, (c) the Prospective Bidder did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Prospective Bidder’s Proposed Asset Purchase Agreement, and (d) the Assets will be conveyed “as is, where is, with all faults,” with limited representations and warranties, and no indemnification or guarantees by the Debtors.

11. Authorization. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder’s board of directors (or

comparable governing body) with respect to the submission, execution, and delivery of any bid for the Assets, participation in the Auction, and closing of the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; or, (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed sale transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.

12. Other Requirements. A Qualified Bid must:

- a. state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the Assets (each such bid, a "Backup Bid");
- b. state that the bid represents a binding, good-faith, and *bona fide* offer to purchase the Assets and is not subject to or conditioned on any further due diligence, and is irrevocable (i) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined in Section VII.C.2 below);
- c. for any bidder other than a Stalking Horse Bidder, state and acknowledge that the Prospective Bidder shall not be entitled to any bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process;
- d. state that the Prospective Bidder is committed to closing the sale transaction contemplated in its bid as soon as practicable (and in no event later than April 11, 2025);
- e. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Process;
- f. not contain any financing contingencies of any kind;
- g. state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees and, if so, to whom;
- h. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture, or other

entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors;

- i. include a covenant to comply with the terms of these Bidding Procedures and the Bidding Procedures Order; and
- j. contain such other information as may be reasonably requested by the Debtors.

## B. Bid Review Process

The Debtors, in consultation with the Consultation Parties, will evaluate bids and, based upon their evaluation of the content of each bid, the Debtors may, as they deem appropriate in their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, engage in negotiations with any Prospective Bidder for the purposes of (i) curing any deficiencies in a bid that prevents them from constituting a Qualified Bid, (ii) improving the terms of the Prospective Bidder's bid, or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

In evaluating a bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including (i) the amount of the proposed purchase price and proposed form of consideration (~~provided that any Credit Bid satisfying the requirements set forth in the Order and the Bidding Procedures shall be deemed to have the same value as the equivalent amount of cash~~); (ii) any Assets included in, or excluded from, the bid, including any Contracts to be assumed and assigned; (iii) the value to be provided to the Debtors under the bid, including the net economic effect on the Debtors' estates; (iv) any benefits to the Debtors' estates from any assumption or waiver of liabilities contemplated by the bid; (v) the structure of the proposed sale transaction and any attendant execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and general financial wherewithal to meet all commitments; and any required governmental approvals; and (vi) the impact of the proposed sale transaction on the Debtors' employees, trade creditors, landlords, and any other parties-in-interest.

The Debtors will evaluate timely bids and will (i) after consultation with the Consultation Parties (subject to Section X.I.C hereof), determine which bids qualify as Qualified Bids and which Qualified Bid has been selected as the Baseline Bid and (ii) notify bidders whether they are Qualified Bidders as soon as commercially reasonable following the Bid Deadline. A Qualified Bidder shall not (without the consent of the Debtors after consultation with the Consultation Parties), modify, amend, or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the Qualified Bid, as determined by the Debtors in their reasonable business judgment. Any Consultation Party that submits a bid ~~or a Credit Bid~~ shall immediately upon submission of such bid ~~or Credit Bid~~ cease to be a Consultation Party, *provided, however*, that upon written notice (which may be via email) by ~~the DIP Lender, if any, or~~ a Committee member to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, ~~the DIP~~

~~Lender's, if any, or the~~such Committee member's (as applicable) rights as a Consultation Party (directly or as a member of the Committee) shall be restored.

### C. Qualified Bidders

Any bidder that submits a Qualified Bid as set forth in Sections V and VI.A above will qualify as a "Qualified Bidder."

The Debtors may, after consultation with the Consultation Parties, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, amend or waive the conditions precedent to qualifying as a Qualified Bidder.

### D. Bid Protections

Other than any Bid Protections approved by the Court in connection with the Stalking Horse Bid, if any, no bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or the Sale process.

## VII. THE AUCTION

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If the Stalking Horse Bid is the only Qualified Bid received in respect of the Assets, the Debtors will not conduct an Auction for the Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing. If the Debtors, after consultation with the Consultation Parties, determine not to hold an Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice containing the following information, as applicable: (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the Successful Bidder; (c) a copy of the Successful Bid or a summary of the material terms of such bid or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if required, will be conducted on ~~March 31~~April 7, 2025, at 10:00 a.m. (prevailing Eastern Time), either (a) at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, New York 10167, (b) at some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties (subject to Section XI.C hereof). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties (subject to Section XI.C hereof), and will cause publication of such change to occur on the Epiq Website as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

If held, the Auction proceedings will be transcribed and/or video recorded.

### A. Participants and Attendees

Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in consultation with the Consultation Parties, and in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. Subject to the Auction procedures set forth in Section VII.B, all Qualified Bidders and the Consultation Parties (including the members of the Committee and the advisors to the Committee and its ~~e~~counsel members) are permitted to attend the Auction; *provided* that the Debtors may, in their ~~sole~~reasonable discretion after consultation with the Consultation Parties, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets, and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction is an irrevocable, binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including any Stalking Horse Bidder, Successful Bidder, and Backup Bidder) shall be deemed to have (i) agreed that all proceedings in the Court related to these Bidding Procedures, the Auction, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction are core proceedings as described in 28 U.S.C. § 157; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction; and (iii) consented to the entry of a final order or judgment by the Court in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document relating directly to the sale transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.



## B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' rights to modify such procedures in their reasonable business judgment (in [each case, in](#) a manner consistent with their fiduciary duties and in consultation with the Consultation Parties (subject to Section XI.C hereof)):

1. Baseline Bids. Prior to the commencement of the Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties (subject to Section XI.C hereof)) the highest or otherwise best Qualified Bid submitted for the Assets (such Qualified Bid, a "Baseline Bid"). Bidding at the Auction shall commence at the amount of the Baseline Bid. **No later than ~~March 23~~ [April 6, 2025 at 5:00 p.m. \(prevailing Eastern Time\)](#)**, the Debtors will provide all Qualified Bidders with (a) a notice identifying which Qualified Bid is the Baseline Bid; and (b) a copy of each Qualified Bid.
2. Minimum Overbid. Bidding shall commence at the Baseline Bid. The first overbid at the Auction shall be in an amount not less than the amount of the Baseline Bid (plus the Bid Protections if the Stalking Horse Bid is the Baseline Bid) plus \$100,000 (the "Minimum Overbid"). At each round of bidding, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round. During the Auction, the Debtors may, in their reasonable discretion, after consultation with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; (b) any additional costs that may be imposed on the Debtors; and (c) any liabilities waived against the estate. Any subsequent bid made by any Stalking Horse Bidder shall be deemed to have been made in an amount equal to such subsequent bid plus the Bid Protections, to the extent provided for in the Stalking Horse Agreement.

3. Leading Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce, after consultation with the Consultation Parties, the bid that they believe to be the highest or otherwise best offer for the Assets (such bid, a "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the material terms of the Leading Bid.

The Auction will include open bidding in the presence of all other Qualified Bidders. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right to determine, in their reasonable business judgment after consultation with the Consultation Parties, which bid is the highest or otherwise best bid with respect to the Assets and, after consultation with the Consultation Parties (subject to Section XI.C hereof), reject, at any time, without liability (but only in the absence of gross negligence or willful misconduct), any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bidding Procedures, any order of the Court, or the best interests of the Debtors and their estates.

### C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best bid (such bid, including the Stalking Horse Bid, if no additional Qualified Bids are received and no Auction conducted, a “Successful Bid”) and (b) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (such bidder, including the Stalking Horse Bidder if no Qualified Bids are received and no Auction conducted, a “Successful Bidder”). Following the conclusion of the Auction, the Debtors shall serve a notice of the Successful Bidder, which notice shall include a copy of the Successful Bid or a summary of the material terms of such bid or provide instructions for accessing the Successful Bid free of charge from the Epiq Website.
2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid, ~~other than any Credit Bid,~~ is the Backup Bid; and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Except as may otherwise be provided in any Stalking Horse Agreement, a Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of the sale transaction with the Successful Bidder for the Assets and (b) 30 days after the Sale

Hearing (such date, the “Backup Bid Expiration Date”). If the sale transaction with the Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the Assets and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; *provided* that the Debtors may, in their reasonable business judgment (after providing notice to the Sale Notice Parties and after consultation with the Consultation Parties), elect not to pursue the sale transaction contemplated by the Backup Bid.

3. Notice of Auction Results. Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which will (a) identify each Successful Bidder and the Backup Bidder; (b) include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the Epiq Website; and (c) set forth the Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**D. Disposition of Good Faith Deposit**

1. Prospective Bidders. Within five business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders, the Escrow Agent shall return to each Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed by the Debtors, such Prospective Bidder’s Good Faith Deposit. Upon the authorized return of a Prospective Bidder’s Good Faith Deposit in accordance with this Section VII.D, the bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.

2. Qualified Bidders.

- a. Forfeiture of Good Faith Deposit. The Good Faith Deposit of a Qualified Bidder shall be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures. The Debtors and their estates shall be entitled to retain the Qualified Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder's failure to adhere to the terms of these Bidding Procedures and/or the relevant Qualified Bid. If a Qualified Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Qualified Bid.
- b. Return of Good Faith Deposit. With the exception of the Good Faith Deposits of the Successful Bidder and the Backup Bidder, the Escrow Agent shall return to any other Qualified Bidder the Qualified Bidder's Good Faith Deposit, within 10 business days after the conclusion of the Auction for the Assets.
- c. Backup Bidder. Unless the Backup Bidder becomes the Successful Bidder, the Escrow Agent shall return the Backup Bidder's Good Faith deposit, within 10 business days after the occurrence of the applicable Backup Bid Expiration Date; *provided, however*, if the Backup Bidder becomes the Successful Bidder, its Good Faith Deposit shall be forfeited if it fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Backup Bidder, and the Debtors and their estates shall be entitled to retain the Backup Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Backup Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Backup Bidder has breached or otherwise failed to satisfy its obligations in

accordance with these Bidding Procedures and the applicable Backup Bid.

- d. Successful Bidder. At the closing of the sale transaction, the Successful Bidder shall be entitled to a credit against the purchase price in the amount of the Successful Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Successful Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the Successful Bid.

### VIII. SALE HEARING

The Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to Court approval. The hearing to approve the sale transaction consummated in accordance with these Bidding Procedures (except in the case of the sale transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) shall take place on **April 310, 2025 at ~~10:00 a.m.~~ 10:00 a.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable \_\_\_\_\_, Thomas M. Horan United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801, ~~5th~~ 5th floor, courtroom # ~~5~~ 5.

At the Sale Hearing, the Debtors will seek entry of an order (a "Sale Order") approving, among other things, the sale of the Assets to the Stalking Horse Bidder or Successful Bidder(s).

The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties, adjourn or reschedule the Sale Hearing by filing a notice or by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing.

The Debtors' presentation to the Court for approval of a selected Qualified Bid as a Successful Bid does not bind the Debtors to such bid. The Debtors will be bound to the Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

## IX. RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment, after consultation with the Consultation Parties (subject to Section XI.C hereof) and in a manner consistent with their fiduciary duties and applicable law, (i) modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or (ii) otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures or the Bidding Procedures Order.

## X. NOTICING

### A. Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties (collectively, the “Bid Notice Parties”):

- Proposed counsel for the Debtors: (i) Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: Joshua D. Morse ([joshua.morse@pillsburylaw.com](mailto:joshua.morse@pillsburylaw.com)), and Andrew V. Alfano ([andrew.alfano@pillsburylaw.com](mailto:andrew.alfano@pillsburylaw.com))), and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary ([bcleary@potteranderson.com](mailto:bcleary@potteranderson.com)) and Brett M. Haywood ([bhaywood@potteranderson.com](mailto:bhaywood@potteranderson.com)));
- The Debtors’ investment banker: Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, New York 10167 (Attn: Drew Talarico ([DTalarico@HL.com](mailto:DTalarico@HL.com)) and Marcus Bellows ([MBellows@HL.com](mailto:MBellows@HL.com))); and
- Proposed counsel for any official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Committee”): (i) Morrison & Foerster LLP, 250 West 55th Street, New York NY 10019-9601 (Attn: Doug Mannal ([dmannal@mofo.com](mailto:dmannal@mofo.com)), Lorenzo Marinuzzi ([lmarinuzzi@mofo.com](mailto:lmarinuzzi@mofo.com)), and Ben Butterfield ([bbutterfield@mofo.com](mailto:bbutterfield@mofo.com))) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801-1494 (Attn: Eric J. Monzo ([emonzo@morrisjames.com](mailto:emonzo@morrisjames.com)) and Brya M. Keilson ([BKeilson@morrisjames.com](mailto:BKeilson@morrisjames.com))).

**B. Sale Notice Parties**

The “Sale Notice Parties” shall include the following persons and entities:

- the Consultation Parties (as applicable);
- ~~counsel for the [DIP Lender: (i) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com)) and (ii) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com))];~~
- counsel to any Stalking Horse Bidder;
- all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors);
- all relevant non-debtor parties (each, a “Counterparty”) to any Contract that may be assumed or rejected in connection with the sale transaction;
- all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);
- any governmental authority known to have a claim against the Debtors in the Chapter 11 Cases;
- the U.S. Trustee;
- all applicable federal, state, and local taxing authorities, including the Internal Revenue Service;
- the United States Securities and Exchange Commission;
- the United States Attorney’s Office for the District of Delaware;
- United States Attorney General’s Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- the Antitrust Division of the United States Department of Justice;
- the Federal Trade Commission;
- proposed counsel for the Committee: ~~(i) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_~~

~~(\_\_\_\_\_@\_\_\_\_\_.com)) and (ii) \_\_\_\_\_ LLP, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com));~~

- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- all other parties as directed by the Court.

**C. Sale Notice and Publication Notice**

No later than **two business days after the entry of the Bidding Procedures Order**, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website a notice (the “Sale Notice”) setting forth (i) a description of the Assets available for sale in accordance with these Bidding Procedures; (ii) the date, time, and location of the Auction and Sale Hearing; (iii) the Sale Objection Deadline and Supplemental Sale Objection Deadline (each as defined in Section X.D below) and the procedures for filing such objections; and, (iv) if applicable, a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Bid Protections to be provided thereunder, as of the date of the Sale Notice.

As soon as practicable but no later than five (5) business days after the entry of this Order, the Debtors shall the post the Sale Notice on the Epiq Website and cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of either the Wall Street Journal, USA Today, The New York Times (national edition) or another publication of similar distribution (the “Publication Notice”).

**D. Sale Objections and Supplemental Sale Objections**

Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a “Sale Objection”) shall, by no later than ~~March 28~~**April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”), be filed with Court and served on the following parties (collectively, the “Objection Notice Parties”):

- Proposed counsel for the Debtors: (i) Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: Joshua D. Morse (joshua.morse@pillsburylaw.com), and Andrew V. Alfano (andrew.alfano@pillsburylaw.com), and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com));

~~• counsel for the [DIP Lender: (i) \_\_\_\_\_ LLP, \_\_\_\_\_,  
\_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com)) and~~



(ii) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com));

- ~~proposed~~Proposed counsel for ~~the Committee:~~ (i) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com) any official committee of unsecured creditors appointed in these Chapter 11 Cases (the “Committee”): (i) Morrison & Foerster LLP, 250 West 55th Street, New York NY 10019-9601 (Attn: Doug Mannal (dmannal@mofo.com), Lorenzo Marinuzzi (lmarinuzzi@mofo.com), and Ben Butterfield (butterfield@mofo.com)) and (ii) \_\_\_\_\_ LLP, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (Attn: \_\_\_\_\_ (@\_\_\_\_\_.com) Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801-1494 (Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (BKeilson@morrisjames.com));
- the U.S. Trustee;
- if applicable, counsel for the relevant Successful Bidder; and
- if applicable, counsel for any relevant Backup Bidder(s).

Following service of the Notice of Auction Results, Sale Notice Parties may object solely with respect to the conduct of the Auction and/or the Successful Bidder or Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”) by **April 18, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”).

**E. Notices Regarding Assumption and Assignment of Contracts**

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

**XI. CONSULTATION BY THE DEBTORS**

**A.** Throughout the Sale Process, the Debtors and their advisors will consult with the Consultation Parties as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors’ business judgment.

**B.** The Debtors shall consult with the Consultation Parties in good faith regarding the sale process, any diligence and other information requested by the Consultation Parties, and the Debtors will provide to the Consultation Parties reports concerning the sale process, including parties contacted, buyer feedback, copies of all letters of intent, drafts of definitive agreements and updates on proposals. For the avoidance of doubt, and without limitation, the Debtors shall consult with the Consultation Parties on the selection of the Baseline Bid, how the

Auction is conducted, any additional Auction procedures, adjourning the Auction, and selecting the Successful Bidder and the Backup Bidder.

**C. Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time.** If a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party; *provided* that the Committee excludes the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding committee member; *provided further* that, upon written notice by such Committee member (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, such Committee member's rights as a Consultation Party (as a Committee member) shall be restored.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures or the Bidding Procedures Order shall not in any way limit the Debtors' discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

**Exhibit A**

**Form APA**

**Exhibit 2**

**Sale Notice**

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

In re:

Nikola Corp., *et al.*,<sup>41</sup>

Debtors.

Chapter 11

Case No. 25-10258 (TMH)

~~(Joint Administration Requested)~~ Jointly Administered

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On February 19, 2025, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. 15] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”)² to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information

<sup>41</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

regarding the potential assumption and assignment of Contracts in connection with a Sale; and (vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VII.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On March ~~17~~, 2025, the Court entered the Bidding Procedures Order [Docket No.   ].

### **ASSETS FOR SALE**

The Debtors intend to sell all, substantially all, or a portion of their Assets.

A Prospective Bidder (as defined in Section III of the Bidding Procedures) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to any Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker at Houlihan Lokey Capital, Inc. (“Houlihan Lokey”):

**Houlihan Lokey Capital, Inc.**  
245 Park Avenue, 20th Floor  
New York, NY 10167  
Attn: Drew M. Talarico and Marcus Bellows  
DTalarico@HL.com | (212) 497-4240  
MBellows@HL.com | (212) 497-4214

### **KEY DATES AND DEADLINES**

#### **A. Bid Deadline**

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.A of the Bidding Procedures) **on or before ~~March 27~~ April 3, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”).

The Qualified Bid requirements are set forth in Section VI.A of the Bidding Procedures.

#### **B. Stalking Horse Bidder Designation**

The Debtors may designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement **no later than March 10~~17~~, 2025, at 4:00 p.m. (prevailing Eastern Time)**, which deadline may be extended by the Debtors (after consultation with the Consultation Parties).

### C. Auction

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If any Stalking Horse Bid is the only Qualified Bid received in respect of the Assets subject to such Stalking Horse Bid, the Debtors will not conduct an Auction for such applicable Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

The Auction, if required, will be conducted on **March 31~~April 7~~, 2025, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, (ii) some other physical location to be determined by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtors. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these chapter 11 cases, located at <https://dm.epiq11.com/Nikola> (the "Epiq Website") as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the Epiq Website, a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder and Backup Bidder(s); (ii) either include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids or provide instructions for accessing the Successful Bid and the Backup Bid free of charge from the Epiq Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

If the Debtors determine, after consultation with the Consultation Parties, not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale

Notice Parties, and cause to be published on the Epiq Website, a notice containing the following information (as applicable): (i) a statement that the Auction for the relevant Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) either include a copy of the Successful Bid or a summary of the material terms of such bid or provide instructions for accessing the Successful Bid free of charge from the Epiq Website; and (iv) the date, time, and location of the Sale Hearing.

### C. **Objection Deadlines**

1. Sale Objection Deadline. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder (in each case other than the Stalking Horse Bidder), all objections to a sale of the Assets, including (a) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (b) entry of any Sale Order must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) filed with the Court by **no later than ~~March 28~~April 4, 2025 at 4:00 p.m. (prevailing Eastern Time)** and served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).
2. Cure Objection Deadline. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than ~~March 28~~April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.
3. Supplemental Sale Objection Deadline. Following service of the Notice of Auction Results, parties may object solely with respect to the particular terms of a proposed Sale or the Successful Bid or Backup Bid (in each case, if such bidder is not the Stalking Horse Bidder). Any Supplemental Sale Objection must be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) filed with the Court by no later **April 18, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline") and served on the Objection Notice Parties.
4. Adequate Assurance Objection. Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's, proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection" and, together with a Cure Objection, a "Contract Objection"), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with



the Court by **no later than April 18, 2025 at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

**D. Notice of Auction Results**

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Epiq Website located at <https://dm.epiq11.com/Nikola>, a Notice of Auction Results. The Notice of Auction Results will (a) identify each Successful Bidder and each Backup Bidder, as applicable; (b) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (c) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**E. Sale Hearing**

The Sale Hearing shall take place on **April 310, 2025 at [~~10:00 a.m.~~10:00 a.m. (prevailing Eastern Time)** before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801 ~~---~~5th floor, courtroom ~~---~~5. The Debtors may adjourn the Sale Hearing may by filing a notice or by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing

**RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

The Debtors reserve the right to, in their reasonable business judgment and after consultation with the Consultation Parties (subject to Section XI.C of, as defined in, the Bidding Procedures) in a manner consistent with their fiduciary duties and applicable law, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures or the Bidding Procedures Order.

**ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website located at <https://dm.epiq11.com/Nikola>.

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF**

**YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF THE STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.**

Dated: ~~February~~March \_\_, 2025  
Wilmington, Delaware

Joshua D. Morse, Esq.  
Jonathan R. Doolittle, Esq.  
**PILLSBURY WINTHROP SHAW  
PITTMAN LLP**  
Four Embarcadero Center, 22<sup>nd</sup> Floor  
San Francisco, California 94111-5998  
Telephone: (415) 983-1000  
Facsimile: (415) 983-1200  
Email: joshua.morse@pillsburylaw.com  
jonathan.doolittle@pillsburylaw.com

-and-

Andrew V. Alfano, Esq.  
Caroline Tart, Esq.  
Chazz C. Coleman, Esq.  
**PILLSBURY WINTHROP SHAW  
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31 West 52<sup>nd</sup> Street  
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Telephone: (212) 858-1000  
Facsimile: (212) 858-1500  
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caroline.tart@pillsburylaw.com  
chazz.coleman@pillsburylaw.com

Respectfully submitted,

/s/ DRAFT

---

M. Blake Cleary (No. 3614)  
Brett M. Haywood (No. 6166)  
Maria Kotsiras (No. 6840)  
Shannon A. Forshay (No. 7293)  
**POTTER ANDERSON & CORROON LLP**  
1313 N. Market Street, 6th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: bcleary@potteranderson.com  
bhaywood@potteranderson.com  
mkotsiras@potteranderson.com  
sforshay@potteranderson.com

*Proposed Counsel to the Debtors and Debtors in Possession*



**Exhibit 3**

**Assumption and Assignment Notice**

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

In re:

Nikola Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-12245 (KBO)

(~~Joint Administration Requested~~ Jointly Administered)

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL ASSETS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On February ~~—19~~, 2025, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. ~~—15~~] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) <sup>2</sup> to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) authorizing the Debtors to designate a Stalking Horse Bidder and provide Bid Protections in accordance with the Stalking Horse Designation Procedures; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale; and

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

(vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VII.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On March ~~17~~, 2025, the Court entered the Bidding Procedures Order [Docket No.   ].

**You are receiving this Notice because you may be a Counterparty to a Contract of the Debtor that may be assumed and assigned to the Successful Bidder for the Debtors’ Assets.**

### CURE COSTS

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with the Sale with the Successful Bidder at the Auction, seek to assume and assign to the Successful Bidder certain of their Contracts. Each of the Contracts that potentially could be assumed and assigned in connection with the Sale, together with the Debtors’ calculation of Cure Costs with respect to such Contracts, is set forth on Schedule 1 hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission by the Debtors, ~~the~~any Stalking Horse Bidder, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

In addition, to the extent that any of the Cure Costs set forth on Schedule 1 do not reflect (i) postpetition payments that have been made by the Debtors in respect of applicable Cure Costs or (ii) any payments that are made by the Debtors in respect of such Cure Costs after the filing of this Notice, the respective amounts required to be paid to cure any existing defaults under the applicable Contracts shall be reduced by any such corresponding postpetition payments, and the Debtors reserve their rights to update the Cure Costs set forth on Schedule 1 accordingly, either by filing a supplemental notice with the Court or by written notice to the applicable Counterparty.

### CONTRACT OBJECTIONS

#### **A. Contract Objection Deadline**

Any Counterparty that wishes to object to the Debtors’ proposed Cure Costs or the assumption and assignment on any basis (each such objection, a “Contract Objection”) must file with the Court by **no later than ~~March 28~~April 4, 2025, at 4:00 p.m. (prevailing Eastern Time)** and serve on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) its Contract Objection, which must be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof.

#### **B. Resolution of Contract Objections**

Pursuant to the Bidding Procedures Order, the Debtors or the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Contract Objection at a hearing scheduled pursuant to the following paragraph. If a Contract Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the Sale, the Debtors and the Successful Bidder may determine that any Contract subject to such resolved Contract Objection no longer will be assumed and assigned.

### C. Adjourned Cure Objections

If a timely filed Contract Objection cannot otherwise be resolved by the parties, the Contract Objection may be heard at the Sale Hearing, or, at the option of the Debtors, ~~in consultation with the Consultation Parties (subject to Section XI.C of, and as defined in, the Bidding Procedures)~~ and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Contract Objection (each such Contract Objection, an “Adjourned Contract Objection”). Any Contract that is the subject of such Adjourned Contract Objection that is solely with regards to Cure Costs may, at the election of the Successful Bidder, and subject to the Debtors’ rights set forth in the Bidding Procedures Order, be assumed and assigned to the Successful Bidder prior to the resolution of such objection as of the closing date of the Sale, so long as the Debtors or Successful Bidder, as applicable, (i) pay any undisputed Cure Costs on or before ~~(x) the Closing Date (as defined in the Stalking Horse Agreement) or (y) in the event the Successful Bidder as of the~~ closing date of the sale of the Assets ~~is a party other than the Stalking Horse Bidder, the date designated for consummating the sale under such Successful Bidder’s purchase agreement~~; and (ii) appropriately reserve funding for the disputed portion of the Cure Costs, if any, pending resolution of the dispute.

**IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CONTRACT OBJECTION, THE COUNTERPARTY SHALL BE (i) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO THE SUCCESSFUL BIDDER, (ii) PROHIBITED FROM ASSERTING THAT THE SUCCESSFUL BIDDER FAILED TO PROVIDE ADEQUATE ASSURANCE, AND (iii) FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE ASSUMPTION AND ASSIGNMENT OF THE APPLICABLE CONTRACT, THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT, OR ADEQUATE ASSURANCE OF FUTURE PERFORMANCE, AND THE CURE COSTS SET FORTH ON SCHEDULE 1 HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE CONTRACT AND SATISFY THE REQUIREMENTS OF SECTION 365(b) OF THE BANKRUPTCY CODE, AND THE COUNTERPARTY TO THE CONTRACT SHALL BE DEEMED BOUND BY AND TO HAVE CONSENTED TO THE CURE COSTS. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING**

**ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.**

**NOTICE OF AUCTION RESULTS**

The Auction, if required, will be conducted on ~~March 31~~April 7, 2025, at 10:00 a.m. (prevailing Eastern Time), either (i) at the offices of at the offices of Houlihan Lokey Capital, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, (ii) at some other physical location to be determined by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtor. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail.

Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any creditor of the Debtors that has provided notice in writing of its intent to observe the Auction via electronic mail to co-counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Brett M. Haywood (bhaywood@potteranderson.com) and Maria Kotsiras (mkotsiras@potteranderson.com)) at least one (1) day prior to the start of the Auction shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the Epiq Website as soon as reasonably practicable and in any event no later than 24 hours before the Auction.

Upon the earlier to occur of (i) five (5) business hours after the conclusion of the Auction; and (ii) Noon (prevailing Eastern Time) the calendar day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by Epiq Corporate Restructuring, LLC, the Debtors' claims and noticing agent in these chapter 11 cases, located at <https://dm.epiq11.com/Nikola> (the "Epiq Website") a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder(s) and Backup Bidder(s); (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the Epiq Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**ADEQUATE ASSURANCE OBJECTIONS**

**A. Adequate Assurance Objection Deadline**

Any Counterparty to a Contract that wishes to object to the proposed assumption and assignment of a Contract, the subject of which objection is the Successful Bidder's (or any other relevant assignee's but not the Stalking Horse Bidder's) proposed form of adequate assurance of



future performance with respect to the Contract (each such objection, an “Adequate Assurance Objection”), must file with the Court and serve on the Objection Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **April 18, 2025 at 4:00 p.m. (prevailing Eastern Time)**.

### **B. Resolution of Adequate Assurance Objections**

Pursuant to the Bidding Procedures Order, the Debtors, the Successful Bidder and the objecting Counterparty must first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

**IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY SHALL FOREVER BE BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND/OR ASSIGNMENT OF THE APPLICABLE CONTRACT WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.**

### **SALE HEARING**

The Sale Hearing shall take place on **April 310, 2025 at ~~10:00 a.m.~~10:00 a.m. (prevailing Eastern Time)** before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801 ~~rd/th~~5th floor, courtroom #5.

### **ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the Epiq Website.

Dated: ~~February~~March \_\_, 2025  
Wilmington, Delaware

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Respectfully submitted,

/s/ DRAFT

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Schedule 1**

<b>Summary report:</b>	
<b>Litera Compare for Word 11.2.0.54 Document comparison done on 3/6/2025 8:00:52 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> nd://4917-4770-3843/1/Nikola - Bidding Procedures Order AS FILED PETITION DATE.docx	
<b>Modified DMS:</b> nd://4917-4770-3843/6/Nikola - Bidding Procedures Order AS FILED PETITION DATE.docx	
<b>Changes:</b>	
Add	199
Delete	195
<del>Move From</del>	0
Move To	0
Table Insert	0
<del>Table Delete</del>	0
Table moves to	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>394</b>