

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
)	
PGX HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 23-10718 (CTG)
)	
Debtors.)	(Jointly Administered)
)	
)	Related to Docket Nos. 9, 61

CERTIFICATION OF COUNSEL REGARDING MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING THE DEBTORS’ PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, (II) APPROVING THE DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING OR DISCONTINUING SERVICES, AND (IV) GRANTING RELATED RELIEF

The undersigned proposed counsel to the above captioned debtors and debtors in possession (collectively, the “Debtors”) hereby certifies the following:

1. On June 4, 2023 (the “Petition Date”), each of the above-captioned debtors and debtors in possession (the “Debtors”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), with the Clerk of the United States Bankruptcy Court for the District of Delaware. The Debtors are continuing to operate their businesses and manage their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On June 4, 2023, the Debtors filed the *Motion of the Debtors for Entry of Interim and Final Orders (I) Approving the Debtors’ Proposed Adequate Assurance of payment for Future Utility*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.



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Services, (II) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, (III) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Services, and (IV) Granting Related Relief [Docket No. 9] (the "Motion").

3. On June 6, 2023, the Court entered the *Interim Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, (III) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Services, and (IV) Granting Related Relief* [Docket No. 61] (the "Interim Order").

4. On June 7, 2023 the Motion and Interim Order were served along with the *Omnibus Notice of Second Day Hearing to be Held On June 28, 2023 at 2:00 P.M. (ET)* [Docket No. 74] (the "Notice"). The Notice indicated an objection deadline of June 21, 2023, which has been extended solely for the Official Committee of Unsecured Creditors (the "UCC") to July 17, 2023 at 4:00 p.m. and for the Office of the United States Trustee for the District of Delaware ("UST") to July 18, 2023 at 4:00 p.m.

5. Other than informal comments from the UCC with respect to the Motion (the "Informal Comments"), the Debtors have not received any responsive pleading relating to the Motion and the undersigned has searched the docket in these cases to confirm no responsive pleading appears thereon.

6. The Debtors have revised the proposed order submitted with the Motion (the "Revised Proposed Order") to address the Informal Comments. A copy of the Revised Proposed Order is attached hereto as **Exhibit A**. A copy of the REDLINED Revised Proposed Order marked to reflect changes to the version filed with the Motion is attached hereto as **Exhibit B**.

7. A copy of the Revised Proposed order has been circulated to the UST and UCC who have confirmed it has no opposition to the entry of the Revised proposed Order in the form attached hereto as **Exhibit A**.

8. Accordingly, the Debtors respectfully request that the Court enter the Revised Proposed Order in the form attached hereto as **Exhibit A** at its earliest convenience.

Dated: July 18, 2023
Wilmington, Delaware

/s/ Michael W. Yurkewicz

**KLEHR HARRISON HARVEY
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*Proposed Co-Counsel to the Debtors and Debtors
in Possession*

EXHIBIT A

Revised Proposed Order

this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. All Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
3. The Debtors shall serve a copy of the Motion and this Final Order on each Utility Provider listed on **Exhibit C** within two business days after the date this Final Order is entered, and upon service, any such Utility Provider shall be bound by the Adequate Assurance Procedures.
4. The Debtors' service of the Motion upon the Utility Providers List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.
5. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.
6. The Adequate Assurance Deposit and the Debtors' ability to pay for future Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

7. To the extent the Debtors identify new or additional Utility Providers or discontinue or terminate services from existing Utility Providers, the Debtors are authorized, but not directed, to add or remove such parties from the Utility Providers List; *provided, however*, that the Debtors shall provide notice of any such addition or removal to the Notice Parties. For any Utility Provider that is subsequently removed from the Utility Providers List, the Debtors are authorized, in their discretion and without further order of the Court, to reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (a) one-half of the average monthly cost of Utility Services previously provided, calculated based on the aforementioned historical average to align with the go-forward average monthly cost of Utility Services and (b) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider; *provided* that for any Utility Provider for which the Adequate Assurance Deposit is reduced, the Debtors shall have (i) provided such Utility Provider with fourteen days' notice of such reduction and (ii) paid such Utility Provider in full and for any outstanding postpetition Utility Services. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider, such Utility Provider shall not be removed from the Utility Providers List, and no funds shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors will serve such Utility Provider with a copy of the Interim Order, including the Adequate Assurance Procedures, and provide such Utility Provider fourteen days' notice to object to the inclusion of such Utility Provider on the Utility Providers List. The Debtors are authorized to increase the Adequate Assurance Deposit by an amount equal to approximately one-half of the Debtors' monthly average cost of services from any subsequently added Utility Provider. The terms of the Interim Order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider to the same extent as if the Utility Provider was listed on the original Utility Providers List attached hereto.

8. The following Adequate Assurance Procedures are hereby approved:
- a. The Debtors will serve a copy of the Motion and the Final Order granting the relief requested herein to each Utility Provider identified on **Exhibit C** within three business days after entry of the Final Order by the Court.
 - b. Subject to paragraphs (f)–(l) herein, to the extent they have not already done so, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$76,534, in the Adequate Assurance Account within 20 days of the Petition Date.
 - c. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, remains unpaid beyond any applicable grace period, and is undisputed, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) the Debtors, 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111, Attn.: Eric Kamerath; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C., Simon Briefel, and Chris Ceresa; Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, Attn.: Spencer Winters, Whitney C. Fogelberg, and Alison J. Wirtz; Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn.: Domenic E. Pacitti and Michael W. Yurkewicz; and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn.: Morton R. Branzburg; (iii) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Jane Leamy; (iv) proposed counsel for the Official Committee of Unsecured Creditors, ArentFox Schiff LLP, 1301 Avenue of the Americas, Floor 42, New York, New York 10019, Attn.: Andrew I. Silfen, Justin A. Kesselman, and Beth M. Brownstein; Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo, Brya M. Keilson, and Jason S. Levin; (v) any other statutory committee appointed in these chapter 11 cases; and (vi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall honor such request within five business days after the date the request is received by the Debtors. The Debtors and any such requesting Utility Provider maintain the ability to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.
 - d. The portion of the Adequate Assurance Deposit attributable to each Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall revert to the Debtors less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) the Debtors reconcile and pay the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider or (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.

- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties.
- f. Any Additional Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided; (iii) summarize the Debtors’ payment history relevant to the affected account(s); (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ended March 31, 2023; (v) certify that the Utility Provider does not already hold a prepetition deposit equal to or greater than one-half the monthly cost of Utility Services; (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- g. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- h. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall have twenty days from the receipt of the Additional Assurance Request to negotiate with the Utility Provider to resolve such Utility Provider’s Additional Assurance Request.
- i. Without further order of the Court, the Debtors may resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.
- j. If the Debtors determine in their business judgment that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider within twenty days of receipt of the Additional Assurance Request, the Debtors may request a hearing (the “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

9. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

11. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder, shall be subject to the “Approved Budget” as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

17. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

REDLINED Revised Proposed Order

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

In re:)	
)	Chapter 11
)	
PGX HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 23-10718 (CTG)
)	
Debtors.)	(Jointly Administered Requested)
)	Re: Docket Nos. 9, 61 <u>9, 61</u>

**FINAL ORDER
(I) APPROVING THE DEBTORS’ PROPOSED
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE
UTILITY SERVICES, (II) APPROVING THE DEBTORS’ PROPOSED
PROCEDURES FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS,
(III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING
OR DISCONTINUING SERVICES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Final Order”), (a) approving the Debtors’ proposed adequate assurance of payment for future utility services, (b) approving the Debtors’ proposed procedures for resolving additional adequate assurance requests, (c) prohibiting utility providers from altering, refusing, or discontinuing services, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. All Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
3. The Debtors shall serve a copy of the Motion and this Final Order on each Utility Provider listed on Exhibit C within two business days after the date this Final Order is entered, and upon service, any such Utility Provider shall be bound by the Adequate Assurance Procedures.
4. The Debtors' service of the Motion upon the Utility Providers List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.
5. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.

6. The Adequate Assurance Deposit and the Debtors' ability to pay for future Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

7. To the extent the Debtors identify new or additional Utility Providers or discontinue or terminate services from existing Utility Providers, the Debtors are authorized, but not directed, to add or remove such parties from the Utility Providers List; *provided, however*, that the Debtors shall provide notice of any such addition or removal to the Notice Parties. For any Utility Provider that is subsequently removed from the Utility Providers List, the Debtors are authorized, in their discretion and without further order of the Court, to reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (a) one-half of the average monthly cost of Utility Services previously provided, calculated based on the aforementioned historical average to align with the go-forward average monthly cost of Utility Services and (b) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider; *provided* that for any Utility Provider for which the Adequate Assurance Deposit is reduced, the Debtors shall have (i) provided such Utility Provider with fourteen days' notice of such reduction and (ii) paid such Utility Provider in full and for any outstanding postpetition Utility Services. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider, such Utility Provider shall not be removed from the Utility Providers List, and no funds shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors will serve such Utility Provider with a copy of the Interim Order, including the Adequate Assurance Procedures, and provide such Utility Provider fourteen days' notice to object to the inclusion of such Utility Provider on

the Utility Providers List. The Debtors are authorized to increase the Adequate Assurance Deposit by an amount equal to approximately one-half of the Debtors' monthly average cost of services from any subsequently added Utility Provider. The terms of the Interim Order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider to the same extent as if the Utility Provider was listed on the original Utility Providers List attached hereto.

8. The following Adequate Assurance Procedures are hereby approved:
 - a. The Debtors will serve a copy of the Motion and the Final Order granting the relief requested herein to each Utility Provider identified on **Exhibit C** within three business days after entry of the Final Order by the Court.
 - b. Subject to paragraphs (f)–(l) herein, to the extent they have not already done so, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$76,534, in the Adequate Assurance Account within 20 days of the Petition Date.
 - c. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, remains unpaid beyond any applicable grace period, and is undisputed, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) the Debtors, 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111, Attn.: Eric Kamerath; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C., Simon Briefel, and Chris Ceresa; Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, Attn.: Spencer Winters, Whitney C. Fogelberg, and Alison J. Wirtz; Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn.: Domenic E. Pacitti and Michael W. Yurkewicz; and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn.: Morton R. Branzburg; ~~(biii)~~ the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Jane Leamy; ~~(e) any;~~ (iv) proposed counsel for the Official Committee of Unsecured Creditors, ArentFox Schiff LLP, 1301 Avenue of the Americas, Floor 42, New York, New York 10019, Attn.: Andrew I. Silfen, Justin A. Kesselman, and Beth M. Brownstein; Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn.: Eric J. Monzo, Brya M. Keilson, and Jason S. Levin; ~~(v) any other~~ statutory committee appointed in these chapter 11 cases; ~~(dvi)~~ and (dvi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall honor such request within five business days after the date the request is received by the Debtors. The Debtors and any such requesting Utility Provider

maintain the ability to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- d. The portion of the Adequate Assurance Deposit attributable to each Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall revert to the Debtors less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) the Debtors reconcile and pay the Utility Provider's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Provider or (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Parties.
- f. Any Additional Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided; (iii) summarize the Debtors' payment history relevant to the affected account(s); (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ended March 31, 2023; (v) certify that the Utility Provider does not already hold a prepetition deposit equal to or greater than one-half the monthly cost of Utility Services; (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- g. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- h. Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall have twenty days from the receipt of the Additional Assurance Request to negotiate with the Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- i. Without further order of the Court, the Debtors may resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not

limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.

- j. If the Debtors determine in their business judgment that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider within twenty days of receipt of the Additional Assurance Request, the Debtors may request a hearing (the “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

9. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved by this Final Order.

11. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or

this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder, shall be subject to the "Approved Budget" as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

17. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.