

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) APPROVING THE DEBTORS' PROPOSED
ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES, AND
(III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR
ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (the “**Motion**”), pursuant to sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of interim and final orders substantially in the forms annexed hereto as Exhibit A and Exhibit B (the “**Interim Order**” and the “**Final Order**”) respectively, (i) prohibiting Utility Providers (as defined below) from altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition; (ii) determining that adequate assurance of payment for postpetition utility services has been furnished to the Utility Providers providing services to the Debtors; and (iii) establishing procedures for resolving future requests by any

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.



Utility Provider for additional adequate assurance of payment. In support of the Motion, the Debtors rely upon the *Declaration of Brian Dow, Chief Financial Officer of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).² In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 366, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

BACKGROUND

I. General Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in these Chapter 11 Cases and no committees have yet been appointed.

II. Description of Utility Services and Utility Providers

5. Historically, in conjunction with its day-to-day operations, the Debtors received traditional utility services from seven (7) unique utility providers for, among other things, telecommunications, gas, electricity, waste disposal, internet, and similar utility products and services. During the last year, the Debtors paid an average of approximately \$53,695 per month on account of utility services. Going forward, the Debtors anticipate needing the services (collectively, the “**Utility Services**”) of utility providers (each, a “**Utility Provider**” and collectively, the “**Utility Providers**”) which, without limitation, are set forth on the list annexed hereto as Exhibit C (the “**Utility Providers List**”).

RELIEF REQUESTED

6. Bankruptcy Code section 366 prohibits a utility company, within the first thirty (30) days after the filing of a chapter 11 case, from altering, refusing, or discontinuing services to, or discriminating against, a debtor solely on the basis of the commencement of bankruptcy proceedings or the debtor’s failure to pay a prepetition debt. In a chapter 11 case, once the initial thirty (30) days have expired, a utility company may discontinue services if the debtor has not provided the utility company with “adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2).

7. By this Motion, the Debtors respectfully request entry of the Interim Order and the Final Order, pursuant to Bankruptcy Code sections 105(a) and 366: (a) prohibiting Utility

Providers from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition Utility Services has been furnished to the Utility Providers providing services to the Debtors; and (c) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment.

I. Proposed Adequate Assurance

8. Bankruptcy Code section 366(c)(1)(A) defines the phrase “assurance of payment” to include, among other things, a cash deposit. As adequate assurance of payment, the Debtors propose to segregate on their books and records, within twenty (20) days after the Petition Date, an amount equal to the estimated cost for two (2) weeks of ongoing Utility Services (*i.e.*, approximately \$26,847.00), calculated based on 50% of the Debtors’ average monthly consumption of Utility Services (the “**Adequate Assurance Deposit**”). Such amount shall be placed into one segregated bank account designated for the Adequate Assurance Deposit (the “**Adequate Assurance Deposit Account**”) for the benefit of all Utility Providers. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Deposit Account to reflect several factors: (a) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), and (b) agreements reached with Utility Providers. These adjustments will permit the Debtors to maintain the Adequate Assurance Deposit Account with an amount that consistently provides the Utility Providers with approximately 50% of the Debtors’ average monthly consumption of the utilities on account of such services.

9. The Debtors submit that the Adequate Assurance Deposit and maintenance of the Adequate Assurance Deposit Account as described above, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business as provided for in the Debtors’ motion for authorization to obtain postpetition financing filed contemporaneously herewith

(together, the “**Proposed Adequate Assurance**”), constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366. However, if any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

II. Proposed Adequate Assurance Procedures

10. In light of the severe consequences to the Debtors of any interruption in services by the Utility Providers, but recognizing the right of each Utility Provider to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors request that the Court approve, and allow the Debtors to implement, the following procedures (the “**Adequate Assurance Procedures**”) by which a Utility Provider not satisfied with the Proposed Adequate Assurance may request additional adequate assurance (an “**Additional Assurance Request**”):

- a. Within three (3) business days of the date the Interim Order is docketed, the Debtors will mail a copy of the Interim Order to the Utility Providers on the Utility Providers List;
- b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com), (iv) counsel to the Prepetition Agents, Alston & Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (v) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) (vi) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie

(jon.lipshie@usdoj.gov); and (vii) counsel to any official committee appointed in the Chapter 11 Cases (together, the “**Notice Parties**”);

- c. Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under Bankruptcy Code section 366(c)(2);
- d. Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance;
- e. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- f. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to (i) counsel to the Sponsoring Noteholders and proposed DIP Lenders and (ii) counsel to the Prepetition Agents, to the extent such agreement involves the use of cash collateral), and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of their business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;
- g. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within thirty (30) days of the date the Additional Adequate Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the “**Adequate Assurance Dispute**”) for the next regularly

scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);

- h. Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- i. Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
- j. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Adequate Assurance" on the Utility Providers List;
- k. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned 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) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider's final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider's final invoice for Utility Services provided to the Debtors is paid.

III. Subsequent Modification of the Utility Providers List

11. The Debtors request that they be allowed, without further order of the Court, to supplement the Utility Providers List if any Utility Provider has been inadvertently omitted therefrom (each an "**Additional Utility Provider**"). If the Debtors determine that the Utility Providers List should be supplemented, the Debtors will, as soon as practicable, file with the Court a supplement to Exhibit C adding the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then serve by email or by facsimile transmission (or, where the

Debtors do not have the email address or fax number of a Utility Provider, by First Class Mail) a copy of this Motion and the signed Interim or Final Order, as applicable, on any Additional Utility Provider.

IV. Request for a Final Hearing

12. The Debtors request that a final hearing on this Motion be held within thirty (30) days of the Petition Date to ensure that, if a Utility Provider argues it may unilaterally refuse service to the Debtors on the 31st day after the Petition Date, the Debtors will have an opportunity, to request that the Court make such modifications to the Adequate Assurance Procedures in time to avoid any potential termination of Utility Services.

BASIS FOR RELIEF

I. Bankruptcy Code Section 366 Grants the Court Discretion to Determine the Adequacy of the Debtors' Proposed Adequate Assurance

13. Congress enacted Bankruptcy Code section 366 to protect a debtor from immediate termination of utility services after filing for bankruptcy, while at the same time providing the utility companies with adequate assurance of payment for postpetition utility services. *See* H R. Rep. No. 95-595, at 350 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Bankruptcy Code Section 366 defines “assurance of payment” to mean several forms of security, including cash deposits, letters of credit, and prepayment of utility services. 11 U.S.C. § 366(c)(1)(A). Bankruptcy Code section 366(c)(1)(B) explicitly excludes, however, offering administrative expense priority as adequate assurance of payment. Further, Bankruptcy Code section 366(c) restricts the factors that a court may consider when determining whether the “assurance of payment” is, in fact, adequate. Specifically, courts may no longer rely on (a) the absence of a security deposit before the debtor’s petition date, (b) the debtor’s history of timely payments, or (c) the availability of an administrative expense priority when determining the amount of a deposit. *See id.* § 366(c)(3)(B).

14. While Bankruptcy Code section 366(c) sets forth what constitutes adequate assurance of payment, the bankruptcy court nonetheless retains discretion to determine what, if any, adequate assurance is necessary to satisfy section 366's requirement that assurance of payment must only be "adequate." See *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) ("The bankruptcy courts are in agreement that section 366(b) vests in the bankruptcy court the exclusive responsibility for determining the appropriate security which a debtor must provide to his utilities to preclude termination of service for nonpayment of prepetition utility bills."); *In re Begley*, 41 B.R. 402, 405-06 (E.D. Pa. 1984), *aff'd*, 760 F.2d 46 (3d Cir. 1985). Accordingly, a court is not required to give the utility companies an "absolute guarantee of payment," or require that the adequate assurance take the form of a deposit, bond, letter of credit, or similar security. *In re Caldor, Inc. -N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996), *aff'd sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997); *In re Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at *5 (Bankr. S.D.N.Y. 2011) (finding that "[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full").

15. Rather, in considering the facts and circumstances of each case, the Court must ensure only that the utility is not subject to an unreasonable risk of non-payment for postpetition services. See *In re Adelpia*, 280 B.R. at 80; *Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981). The Court, therefore, must strike a balance between satisfying the utility company's need for adequate assurance and ensuring that the debtor gives no more than what is adequate, as the debtor has a conflicting need to conserve financial resources. See *In re Magnesium Corp. of Am.*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (holding that to require the debtor to allocate valuable liquidity to provide further "adequate assurance" to

satisfy a utility's obligations before its amount has been fixed would prejudice the entirety of the debtor's unsecured creditor body for the benefit of a single one).

16. In determining whether a utility is subject to an unreasonable risk of nonpayment, the Court may consider whether the utility would seek the same additional security from a non-bankruptcy customer. *See In re Caldor, Inc. -N.Y.*, 199 B.R. at 3 (finding that the utility companies were not seeking additional security for an adequate assurance of future payment, but solely because their monopoly position permitted them to capitalize on the debtor bankruptcy filing); *Whittaker v. Phila. Elec. Co. (In re Whittaker)*, 84 B.R. 934, 937, 941-42 (Bankr. E D. Pa. 1988), *aff'd*, 882 F.2d 791 (3d Cir. 1989) (finding utility company violated Bankruptcy Code section 366 when it refused to restore debtor's electric service, upon notice of bankruptcy filing, without prepayment of deposit as adequate assurance of future payment).

II. The Debtors' Proposed Adequate Assurance is Adequate

17. Because this Court is afforded the discretion to determine the assurance necessary to satisfy the Utility Providers' needs, the Debtors submit that the Proposed Adequate Assurance is more than adequate to ensure that the Debtors will meet their ongoing postpetition utility obligations. The Debtors' proposal comports with numerous orders entered by this and other bankruptcy courts in this District. *See, e.g., In re Number Holdings, Inc.*, Case No. 24-10719 (JKS) (Bankr. D. Del. Apr. 10, 2024) [Docket No. 119] (granting interim adequate assurance order based on adequate assurance cash deposit of one-half of the Debtor's average aggregate monthly utility bill); *In re ICON Aircraft, Inc.*, Case No. 24-10703 (CTG) (Bankr. D. Del. Apr. 5, 2024) [Docket No. 47] (authorizing same); *In re Yellow Corp.*, Case No. 23-11069 (CTG) (Bankr. D. Del. Aug. 17, 2023) [Docket No. 277] (authorizing same); *In re Amyris, Inc.*, Case No. 23-11131 (TMH) (Bankr. D. Del. Aug. 11, 2023) [Docket No. 60] (authorizing same).

18. The Debtors' receipt of uninterrupted Utility Services is vital to the Debtors' continued business operations, and, consequently, to the success of these Chapter 11 Cases. Accordingly, the relief requested herein is necessary and in the best interests of the Debtors, their estates, and their creditors. Such relief ensures that the Debtors' business operations will not be disrupted and provides Utility Providers and the Debtors with an orderly and fair procedure for determining "adequate assurance."

19. Based upon the foregoing, the Debtors submit that the relief requested herein should be granted.

III. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should Be Waived

20. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

21. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

22. Nothing contained herein is intended or should be construed as (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors'

rights to dispute any claim or lien; (c) a request to assume or reject any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (d) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise; or (e) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Utility Provider.

NOTICE

23. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Prepetition Agents; (d) counsel to the Sponsoring Noteholders and proposed DIP Lenders; (e) counsel to the proposed DIP Agent; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Office of the United States Attorney for the District of Delaware; (i) the Utility Providers; (j) any banking or financial institution that holds Debtors' accounts; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

24. No prior request for the relief sought herein has been made to this Court or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as the Court deems appropriate.

Dated: May 7, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona
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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket No. __

INTERIM ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE; (II) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT

Upon the motion (the "**Motion**")² of the Debtors for an interim order, pursuant to Bankruptcy Code sections 105(a) and 366; Bankruptcy Rules 6003 and 6004; and Local Rule 9013-1(m), (i) prohibiting Utility Providers from altering, refusing or discontinuing service; (ii) approving the Debtors' Proposed Adequate Assurance of payment for postpetition services; and (iii) establishing procedures for resolving requests for additional adequate assurance of payment; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors' principal place of business and the Debtors' mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or First Day Declaration, as applicable.

of a final order under Article III of the United States Constitution; and the 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Providers to the Debtors after the Petition Date.
4. The Debtors shall provide an adequate assurance deposit for all Utility Providers by depositing \$26,847.00, which is equal to approximately 50% of the Debtors' average monthly consumption of Utility Services (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be deposited into a separate bank account with a bank that has signed a uniform deposit agreement with the United States Trustee's office for the District of Delaware (the "**Adequate Assurance Deposit Account**").
5. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Provider when determining the allocable part of the Adequate Assurance Deposit to be made on behalf of such Utility Provider. Additionally, the rights of Utility Providers with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.

6. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Deposit and the Debtors' ability to pay for future utility services in the ordinary course of business and constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366.

7. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Utility Providers are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges or (b) requiring additional adequate assurance of payment other than the Proposed Adequate Assurance, as a condition of the Debtors continuing to receive Utility Services.

8. The following Adequate Assurance Procedures are approved:

- a) Within three (3) business days of the date the Interim Order is docketed, the Debtors will mail a copy of this Interim Order to the Utility Providers on the Utility Providers List;
- b) If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com), (iv) counsel to the Prepetition Agents, Alston & Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818,

Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (v) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) (vi) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov); and (vii) counsel to any official committee appointed in the Chapter 11 Cases (together, the “**Notice Parties**”);

- c) Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which utility services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under Bankruptcy Code section 366(c)(2);
- d) Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance;
- e) Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- f) The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to (i) counsel to the Sponsoring Noteholders and proposed DIP Lenders and (ii) counsel to the Prepetition Agents, to the extent such agreement involves the use of cash collateral), and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;
- g) If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable

Utility Provider within thirty (30) days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the “**Adequate Assurance Dispute**”) for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);

- h) Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Provider(s) pursuant to 11 U.S.C. § 366(c)(3), any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- i) Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days’ notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
- j) Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance” on the Utility Providers List;
- k) The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned 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) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider’s final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider’s final invoice for Utility Services provided to the Debtors is paid.

9. The Debtors may supplement the Utility Providers List³ without further order of the Court with Additional Utility Providers by filing with the Court, as soon as practicable, a supplement to the Utility Providers List that adds the name of any Additional Utility Provider to

³ The Utility Providers List is attached to the Motion as Exhibit C.

the Utility Providers List. The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of an Additional Utility Provider, by First Class Mail) a copy of the Motion and this Interim Order on any Additional Utility Provider. The Debtors will also supplement the Adequate Assurance Deposit in an amount equal to 50% (net of surety bonds and deposits) of the Debtors' average monthly utility consumption for an added Utility Provider.

10. The Debtors may amend the Utility Providers List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers and only if the Debtors have not received any objection from such Utility Provider or any other parties in interest. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the two (2) week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Provider or any parties in interest, or until any such objection has been resolved consensually or by order of the Court.

11. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreement of the Debtors and the applicable Utility Provider, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Deposit attributable to it in the Adequate Assurance Deposit Account.

12. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Interim Order, pending entry of a Final Order.

13. Nothing contained herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on the Utility Providers List.

14. Within three (3) business days after the date of this Interim Order, the Debtors shall serve a copy of this Interim Order and the Motion on each Utility Provider identified on the Utility Providers List. Within three (3) business days of filing a supplement to the Utility Providers List, as applicable, the Debtors shall serve a copy of this Interim Order and the Motion on any applicable Additional Utility Provider.

15. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' rights to dispute any claim or lien; (c) a waiver of a Utility Provider's rights with regard to assertion of any claim or interest; (d) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (e) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise; or (f) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Utility Provider.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

17. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

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

20. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, **2024, at ____: __.m. Prevailing Eastern Time.**

21. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on the following parties **no later than 4:00 p.m. Prevailing Eastern Time** on _____, (a) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Alston & Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (e) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) and (f)

the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov).

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

EXHIBIT B

Proposed Final Order

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket Nos. ____

FINAL ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE; (II) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT

Upon the motion (the “**Motion**”)² of the Debtors for interim and final orders, pursuant to Bankruptcy Code sections 105(a) and 366; Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m): (i) prohibiting Utility Providers from altering, refusing or discontinuing service; (ii) approving the Debtors’ Proposed Adequate Assurance of payment for postpetition services; and (iii) establishing procedures for resolving requests for additional adequate assurance of payment; and the Court having reviewed the Motion and the First Day Declaration, and the Interim Order dated _____, 2024; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. §

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or First Day Declaration, as applicable.

157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Providers to the Debtors after the Petition Date.
4. To the extent not otherwise already done, the Debtors shall provide an adequate assurance deposit for all Utility Providers by depositing \$26,847.00, which is equal to approximately 50% of the Debtors' average monthly consumption for Utility Services (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be deposited into a separate bank account with a bank that has signed a uniform deposit agreement with the United States Trustee's office for the District of Delaware (the "**Adequate Assurance Deposit Account**").
5. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Provider when determining the allocable part of the Adequate Assurance Deposit to be made on behalf of such Utility Provider. Additionally, the

rights of Utility Providers with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.

6. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Deposit and the Debtors' ability to pay for future utility services in the ordinary course of business and constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366.

7. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Utility Providers are prohibited from: (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges or (b) requiring additional adequate assurance of payment other than the Proposed Adequate Assurance, as a condition of the Debtors continuing to receive Utility Services.

8. The following Adequate Assurance Procedures are approved:

- a. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com), (iv) counsel to the Prepetition Agents, Alston &

Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (v) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) (vi) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov); and (vii) counsel to any official committee appointed in the Chapter 11 Cases (together, the “**Notice Parties**”);

- b. Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which utility services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under Bankruptcy Code section 366(c)(2);
- c. Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance;
- d. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to (i) counsel to the Sponsoring Noteholders and proposed DIP Lenders and (ii) counsel to the Prepetition Agents, to the extent such agreement involves the use of cash collateral), and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;

- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within thirty (30) days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the “**Adequate Assurance Dispute**”) for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);
 - g. Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
 - h. Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days’ notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
 - i. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance” on the Utility Providers List;
 - j. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned 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) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider’s final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider’s final invoice for Utility Services provided to the Debtors is paid.
7. The Debtors may supplement the Utility Providers List³ without further order of the Court with Additional Utility Providers by filing with the Court, as soon as practicable, a

³ The Utility Providers List is attached to the Motion as Exhibit C.

supplement to the Utility Providers List that adds the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of an Additional Utility Provider, by First Class Mail) a copy of the Motion and this Interim Order on any Additional Utility Provider. The Debtors will also supplement the Adequate Assurance Deposit in an amount equal to 50% (net of surety bonds and deposits) of the Debtors' average monthly utility consumption for an added Utility Provider.

8. The Debtors may amend the Utility Service List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers and only if the Debtors have not received any objection from such Utility Provider or any other parties in interest. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the two (2) week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Provider or any parties in interest, or until any such objection has been resolved consensually or by order of the Court.

9. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreements of the Debtors and the applicable Utility Provider, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Deposit attributable to it in the Adequate Assurance Deposit Account.

10. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

11. Nothing contained herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on the Utility Providers List.

12. Within three (3) business days after the date of this Final Order, the Debtors shall serve a copy of this Final Order on each Utility Provider identified on the Utility Providers List. Within three (3) business days of filing a supplement to the Utility Providers List, as applicable, the Debtors shall serve a copy of this Final Order and the Motion on any Additional Utility Provider.

13. Nothing in this Final Order authorizes the Debtors to pay prepetition claims without further order of the Court.

14. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' rights to dispute any claim or lien; (c) a waiver of a Utility Provider's rights with regard to assertion of any claim or interest; (d) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (e) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9); or (f) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Utility Provider.

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

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

17. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

EXHIBIT C

Utility Providers List

Utility Provider Name	Utility Provider Address	Utility Type	Adequate Assurance
PG&E	P.O. Box 997300 Sacramento, CA 95899-7300	Gas & Electric	\$18,591.00
AT&T	P.O. Box 5080 Carol Stream, IL 60197-5001	Internet/Wi-Fi	\$792.00
Comcast Business	P.O. Box 60533 City of Industry, CA 91716	Internet/Wi-Fi	\$154.00
Wiline Networks	P.O. Box 102150 Pasadena, CA 91189	Internet/Wi-Fi	\$390.00
Pleasanton Garbage Services	P.O. Box 399 Pleasanton, CA 94566	Garbage	\$1,558.00
Environmental Service Partners	2550 Barrington Ct Hayward, CA 94545	Garbage	\$4,467.00
RingCentral	P.O. Box 734232 Dallas, TX 75373-4232	Telephone	\$895.00
Total Adequate Protection Amount			\$26,847.00