

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

AN Global, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Joint Administration Requested)

Re: Docket No. 4 and 63

CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES ON ACCOUNT OF PREPETITION INVOICES, (II) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT

The undersigned hereby certifies as follows:

1. On August 28, 2023, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Services on Account of Prepetition Invoices, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8173); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707); AgileThought Argentina, S.A. (No Tax ID); AGS Alpama Global Services México, S.A. de C.V. (No Tax ID); and Tarnow Investment, S.L. (No Tax ID). The Debtors’ headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, Texas 75039.



[Docket No. 4] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Pursuant to the *Interim Order Pursuant to 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Services on Account of Prepetition Invoices, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment* [Docket No. 63] entered on August 30, 2023 (the “Interim Order”) and the *Omnibus Notice of Second Day Hearing to be Held on October 4, 2023 at 2:00 p.m. (ET)* [Docket No. 70] filed on August 31, 2023, respectively, any objection or response to the final relief requested in the Motion was to be filed and served so as to be received by no later than September 14, 2023 at 4:00 p.m. (ET) (the “Objection Deadline”).²

3. Prior to the Objection Deadline, the Debtors received an informal response (the “Informal Response”) from the Committee. Other than the Informal Response, the Debtors received no other responses to the Motion and no objections or responses have been filed on the Docket. The Informal Response was resolved by revisions to the Proposed Order, and such revised order is attached hereto as **Exhibit A** (the “Revised Order”). For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Proposed Order is attached hereto as **Exhibit B**.

WHEREFORE, the Debtors respectfully request that the proposed form of order granting the relief requested in the Motion, attached hereto as **Exhibit A**, be entered at the earliest convenience of the Court.

² The objection deadline was extended until September 27, 2023 at 4:00 p.m. for the Official Committee of Unsecured Creditors (the “Committee”).

Dated: September 29, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ R. Stephen McNeill

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Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

(Revised Proposed Order)

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

In re

AN GLOBAL LLC, et al.,¹

Debtors.

Chapter 11

Case No. 23-11294 (JKS)

(Jointly Administered)

Re: Docket Nos. 4 and 63

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING
UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES ON
ACCOUNT OF PREPETITION INVOICES, (II) DEEMING UTILITIES
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III)
ESTABLISHING PROCEDURES FOR DETERMINING
ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “Motion”)² of the debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), for entry of the Interim Order and the Final Order, pursuant to sections 105(a) and 366 of the Bankruptcy Code, (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (ii) approving the Proposed Adequate Assurance and the Adequate

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

Assurance Procedures; (iii) prohibiting the Utility Providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance; (iv) determining that the Debtors are not required to provide any additional adequate assurance, beyond the Proposed Adequate Assurance; and (v) setting the Final Hearing; and upon the *Declaration of James S. Feltman, Chief Restructuring Officer of the Debtors, in Support of First Day Relief*; and it appearing that this Court has jurisdiction to consider the Motion 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 it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record herein; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estates, their creditors and other parties in interest; 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. Payment of Post-Petition Date Utility Charges. The Debtors are authorized to and shall pay, in accordance with their pre-Petition Date practices, all post-Petition Date utility charges for all utility services rendered by the Utility Providers to the Debtors.
3. Pre-Petition Date Security Deposits. Any security deposits that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility

Providers holding the same, except upon either (a) written agreement(s) between the applicable Debtor and a Utility Provider without further order of the Court or (b) further order(s) of the Court.

4. Adequate Assurance of Future Payment. The Proposed Adequate Assurance is hereby approved and the Debtors are deemed to have furnished the Utility Providers with adequate assurance of payment under section 366 of the Bankruptcy Code for post-Petition Date utility services by having deposited cash in an amount equal to the Debtors' estimated aggregate cost for two (2) weeks of utility services from the Utility Providers calculated from an historical average for the six (6) months prior to the Petition Date, or approximately \$18,073.21 (the "Adequate Assurance Deposits"), into an interest-bearing, newly-created, segregated account (the "Utility Account") within ten business days after the date of entry of the Interim Order approving this Motion; provided, however, that, the Debtors shall be authorized to reduce the Utility Deposit to reflect terminated utility service upon either (a) obtaining the affected Utility Company's consent to reduce the Utility Deposit; or (b) filing notice with the Court and serving upon the affected Utility Company a notice of the Debtors' intent to reduce the Utility Deposit within fourteen (14) days thereof and receiving no response thereto.³ Upon the effective date of any plan of reorganization or liquidation of the Debtors, unless otherwise provided in such plan of reorganization or liquidation or other order of the Court, the Debtors, in their sole discretion and without further application to or order of the Court, may close the Utility Account and return all remaining funds to their operational and deposit accounts maintained in the ordinary course of business.

3. In the event that the Debtors have multiple utility services accounts with a particular Utility Provider, the Debtors' reduction of the Utility Deposit upon termination of utility services from a particular Utility Provider will be based on those utility services accounts actually terminated.

5. Prohibition. Absent further order of the Court, all Utility Providers are prohibited from (a) discontinuing, altering or refusing service to the Debtors on account of any prepetition amounts outstanding, (b) discriminating against the Debtors or (c) requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices, other than as provided in the Motion and this Final Order.

6. Adequate Assurance Procedures. The Adequate Assurance Procedures for determining requests for additional adequate assurance are approved on a final basis as follows:

- (a) Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- (b) The Debtors will serve copies of the Interim Order and the Final Order, as applicable, via first-class mail, within forty-eight (48) hours after the Interim Order and the Final Order, as applicable, is entered by the Court on all Utility Providers identified on the Utility Provider List. For the avoidance of doubt, the Motion will be served with the Interim Order. In the event that any Utility Provider has been omitted from the Utility Provider List, the Debtors shall supplement this list and shall promptly serve copies of the Motion, the Interim Order, and the Final Order, as applicable, on such Utility Provider upon learning of such omission.
- (c) Any Utility Provider that believes it requires additional adequate assurance must serve a request (an "Adequate Assurance Request") upon: (i) counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq., Email: jryan@potteranderson.com), and Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Kathryn A. Coleman, Esq., Email: katie.coleman@hugheshubbard.com, and Christopher Gartman, Esq., Email:); and (ii) counsel for the Official Committee of Unsecured Creditors (the "Committee"), Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, Delaware

19801 (Attn: Bradford J. Sandler, Esq., Email: bsandler@pszjlaw.com and Cia H. Mackle, Esq., Email: cmackle@pszjlaw.com).

- (d) Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtors; (iv) set forth the basis for the Utility Provider's belief that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors, along with an explanation of why such proposal is reasonable. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- (e) Upon the Debtors' receipt of any Adequate Assurance Request at the address set forth above, the Debtors shall have until twenty-one days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the "Resolution Period") to negotiate with a Utility Provider and advise the Utility Provider that the Adequate Assurance Request is acceptable.
- (f) The Debtors may, in their discretion, resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable and to the extent authorized pursuant to any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder, *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to the counsel for the Committee upon request.
- (g) If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the

“Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.

- (h) Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be (i) prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.
- (i) Unless and until a Utility Provider serves an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, such Utility Provider shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Provider within the meaning of section 366(c)(2) of the Bankruptcy Code.

7. Modifications to the Utility Provider List. To the extent that the Debtors identify additional Utility Providers not included on the Utility Provider List, the Debtors will promptly (a) file a supplement to the Utility Provider List adding the name of the newly-identified Utility Providers, (b) serve copies of the Motion, the Interim Order and the Final Order on such Utility Providers, and (c) add the equivalent of two weeks’ worth of utilities charges to the Utility Account within ten business days after the service described in (b). This Final Order shall be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Provider List, subject to any further order(s) of the Court.

8. Any Utility Provider subsequently added to the Utility Provider List shall be subject to the terms of this Final Order, including Assurance Procedures.

9. Failure to Submit Adequate Assurance Request. Any Utility Provider that fails to submit an Adequate Assurance Request pursuant to the Adequate Assurance Procedures shall be deemed to have received adequate assurance of future payment during the pendency of these Chapter 11 Cases, and shall further be deemed to have waived any right to seek additional

adequate assurance during the course of the Chapter 11 Cases, except as provided in section 366(c) of the Bankruptcy Code.

10. Service of Order. The Debtors will serve copies of the Final Order via first-class mail, within forty-eight (48) hours after the date that this Final Order is entered by the Court on all Utility Providers identified on the Utility Provider List.

11. No Admission or Waiver. Nothing in the Motion or in this Final Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, including the validity or priority thereof, (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law. Likewise, any payment made pursuant to the Interim Order or this Final Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

12. The Debtors are authorized to take all actions necessary to implement this Final Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Final Order.

EXHIBIT B

(Blackline)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

AN GLOBAL LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. ~~23~~ 23-11294
(~~JKS~~)

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Re: Docket ~~No~~ Nos. 4 and 63

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Upon the motion (the “Motion”)² of the debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), for entry of the Interim Order and the Final Order, pursuant to sections 105(a) and 366 of the Bankruptcy Code, (i) determining that the

¹. ~~A complete list of the~~The Debtors in these ~~chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://keelle.com/AgileThought>~~Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number or registration number in the applicable jurisdiction, are: AN Global LLC (5504); AgileThought, Inc. (2509); 4th Source Holding Corp. (9629); 4th Source Mexico, LLC (7552); 4th Source, LLC (7626); AgileThought Brasil-Consultoria Em Tecnologia LTDA (01-42); AgileThought Brasil Servicos de Consultoria Em Software (01-20); AgileThought Costa Rica S.A. (6822); AgileThought Digital Solutions, S.A.P.I. de C.V. (3KR0); AgileThought México S.A. de C.V. (7E46); AgileThought, LLC (7076); AgileThought Servicios Administrativos, S.A. de C.V. (4AG1); AgileThought Servicios México S.A. de C.V. (8MY5); AgileThought, S.A.P.I. de C.V. (No Tax ID); AGS Alpama Global Services USA, LLC (0487); AN Data Intelligence, S.A. de C.V. (8I73); AN Extend, S.A. de C.V. (1D80); AN Evolution, S. de R.L. de C.V. (7973); AN USA (5502); AN UX, S.A. de C.V. (7A42); Cuarto Origen, S. de R.L. de C.V. (0IQ9); Entrepids México, S.A. de C.V. (OCYA); Entrepids Technology Inc. (No Tax ID); Facultas Analytics, S.A.P.I. de C.V. (6G37); Faktos Inc., S.A.P.I. de C.V. (3LLA); IT Global Holding LLC (8776); and QMX Investment Holdings USA, Inc. (9707); AgileThought Argentina, S.A. (No Tax ID); AGS Alpama Global Services México, S.A. de C.V. (No Tax ID); and Tarnow Investment, S.L. (No Tax ID). The Debtors’ ~~address is~~headquarters are located at 222 W. Las Colinas Boulevard, Suite 1650E, Irving, ~~TX~~Texas 75039.

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Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (ii) approving the Proposed Adequate Assurance and the Adequate Assurance Procedures; (iii) prohibiting the Utility Providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance; (iv) determining that the Debtors are not required to provide any additional adequate assurance, beyond the Proposed Adequate Assurance; and (v) setting the Final Hearing; and upon the *Declaration of James S. Feltman, Chief Restructuring Officer of the Debtors, in Support of First Day Relief*; and it appearing that this Court has jurisdiction to consider the Motion 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 it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record herein; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

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2. Payment of Post-Petition Date Utility Charges. The Debtors are authorized to and shall pay, in accordance with their pre-Petition Date practices, all post-Petition Date utility charges for all utility services rendered by the Utility Providers to the Debtors.

3. Pre-Petition Date Security Deposits. Any security deposits that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Providers holding the same, except upon either (a) written agreement(s) between the applicable Debtor and a Utility Provider without further order of the Court or (b) further order(s) of the Court.

4. Adequate Assurance of Future Payment. The Proposed Adequate Assurance is hereby approved and the Debtors are deemed to have furnished the Utility Providers with adequate assurance of payment under section 366 of the Bankruptcy Code for post-Petition Date utility services by having deposited cash in an amount equal to the Debtors' estimated aggregate cost for two (2) weeks of utility services from the Utility Providers calculated from an historical average for the six (6) months prior to the Petition Date, or approximately \$18,073.21 (the "Adequate Assurance Deposits"), into an interest-bearing, newly-created, segregated account (the "Utility Account") within ten business days after the date of entry of the Interim Order approving this Motion; provided, however, that, the Debtors shall be authorized to reduce the Utility Deposit to reflect terminated utility service upon either (a) obtaining the affected Utility Company's consent to reduce the Utility Deposit; or (b) filing notice with the Court and serving upon the affected Utility Company a notice of the Debtors' intent to reduce the Utility Deposit within fourteen (14) days thereof and receiving no response thereto.³ Upon the effective date of any plan of reorganization or liquidation of the Debtors, unless otherwise provided in such plan of reorganization or liquidation or other order of the

3. In the event that the Debtors have multiple utility services accounts with a particular Utility Provider, the Debtors' reduction of the Utility Deposit upon termination of utility services from a particular Utility Provider will be based on those utility services accounts actually terminated.

Court, the Debtors, in their sole discretion and without further application to or order of the Court, may close the Utility Account and return all remaining funds to their operational and deposit accounts maintained in the ordinary course of business.

5. Prohibition. Absent further order of the Court, all Utility Providers are prohibited from (a) discontinuing, altering or refusing service to the Debtors on account of any prepetition amounts outstanding, (b) discriminating against the Debtors or (c) requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices, other than as provided in the Motion and this Final Order.

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- (a) Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- (b) The Debtors will serve copies of the Interim Order and the Final Order, as applicable, via first-class mail, within forty-eight (48) hours after the Interim Order and the Final Order, as applicable, is entered by the Court on all Utility Providers identified on the Utility Provider List. For the avoidance of doubt, the Motion will be served with the Interim Order. In the event that any Utility Provider has been omitted from the Utility Provider List, the Debtors shall supplement this list and shall promptly serve copies of the Motion, the Interim Order, and the Final Order, as applicable, on such Utility Provider upon learning of such omission.
- (c) Any Utility Provider that believes it requires additional adequate assurance must serve a request (an "Adequate Assurance Request") upon: (i) counsel for the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq.,

Email: jryan@potteranderson.com), and Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Kathryn A. Coleman, Esq., Email: katie.coleman@hugheshubbard.com, and Christopher Gartman, Esq., Email: chris.gartman@hugheshubbard.com); and (ii) counsel for the Official Committee of Unsecured Creditors (the "Committee"), Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Bradford J. Sandler, Esq., Email: bsandler@pszjlaw.com and Cia H. Mackle, Esq., Email: cmackle@pszjlaw.com).

- (d) Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtors; (iv) set forth the basis for the Utility Provider's belief that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors, along with an explanation of why such proposal is reasonable. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- (e) Upon the Debtors' receipt of any Adequate Assurance Request at the address set forth above, the Debtors shall have until twenty-one days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the "Resolution Period") to negotiate with a Utility Provider and advise the Utility Provider that the Adequate Assurance Request is acceptable.
- (f) The Debtors may, in their discretion, resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable and to the extent authorized pursuant to any orders authorizing postpetition financing and the use of cash collateral and the applicable budget thereunder; provided, however, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to the counsel for the Committee upon request.

- (g) If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- (h) Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be (i) prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.
- (i) Unless and until a Utility Provider serves an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, such Utility Provider shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Provider within the meaning of section 366(c)(2) of the Bankruptcy Code.

7. Modifications to the Utility Provider List. To the extent that the Debtors identify additional Utility Providers not included on the Utility Provider List, the Debtors will promptly (a) file a supplement to the Utility Provider List adding the name of the newly-identified Utility Providers ~~and~~, (b) serve copies of the Motion, the Interim Order and the Final Order on such Utility Providers, and (c) add the equivalent of two weeks’ worth of utilities charges to the Utility Account within ten business days after the service described in (b). This Final Order shall be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Provider List, subject to any further order(s) of the Court.

8. Any Utility Provider subsequently added to the Utility Provider List shall be subject to the terms of this Final Order, including Assurance Procedures.

9. Failure to Submit Adequate Assurance Request. Any Utility Provider that fails to submit an Adequate Assurance Request pursuant to the Adequate Assurance Procedures shall be deemed to have received adequate assurance of future payment during the pendency of these Chapter 11 Cases, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Chapter 11 Cases, except as provided in section 366(c) of the Bankruptcy Code.

10. Service of Order. The Debtors will serve copies of the Final Order via first-class mail, within forty-eight (48) hours after the date that this Final Order is entered by the Court on all Utility Providers identified on the Utility Provider List.

11. No Admission or Waiver. Nothing in the Motion or in this Final Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, including the validity or priority thereof, (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law. Likewise, any payment made pursuant to the Interim Order or this Final Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

~~12. Notwithstanding anything in this Order to the contrary, the relief granted herein shall be subject to the orders authorizing postpetition financing and the use of cash collateral and any applicable budget thereunder.~~

12. ~~13.~~ The Debtors are authorized to take all actions necessary to implement this Final Order.

13. ~~14.~~ This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Final Order.