

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 23-90901 (MI)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

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

Emergency relief has been requested. Relief is requested not later than 3:30 p.m. (prevailing Central Time) on November 9, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on November 9, 2023 at 3:30 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk Street, Houston, Texas 77002.

Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors' service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors' chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, "Party City") which emerged from chapter 11 cases in this Court on October 12, 2023. See *In re Party City Holdco Inc., et al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.



Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Isgur’s home page. Select the case name, complete the required fields and click “submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) approving the proposed adequate assurance of payment for future utility services, (b) prohibiting utility providers from altering, refusing, or discontinuing utility services, (c) establishing procedures for determining adequate assurance of payment, and (d) granting related relief.

2. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing to consider approval of this motion on a final basis.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

4. Venue is proper pursuant to 28 U.S.C. § 1408.

5. The statutory bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1075-

1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

6. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) substantially contemporaneously herewith. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

7. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously herewith and incorporated herein by reference.²

The Utility Services and Proposed Adequate Assurance

I. Utility Services and Utility Providers

8. In connection with the operation of their businesses, the Debtors obtain electricity, natural gas, water and sewage, trash and recycling, telecommunications, internet, security, and other similar services (collectively, the “Utility Services”) from various utility providers directly (each, a “Utility Provider” and collectively, the “Utility Providers”). A list of the Utility Providers

² Capitalized terms used but not defined in this motion have the meanings ascribed to them in the First Day Declaration.

and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the “Utility Service List”) is attached hereto as Schedule 1.³ The relief requested herein is requested with respect to all Utility Providers supplying the Utility Services to the Debtors.

9. The provision of uninterrupted Utility Services is essential to the Debtors’ ongoing business operations. As described in the First Day Declaration, the Debtors are a leading manufacturer of foil balloons and other related products. The Debtors primarily conduct their operations at two facilities: (i) a 110,000 sq. ft. corporate headquarters office, manufacturing and printing facility in Eden Prairie, Minnesota and (ii) a 391,000 sq. ft. distribution facility in Bloomington, Minnesota. The Debtors also sublease one other location in Minnesota, and the sublessee reimburses the Debtors for utility services at that location. To ensure that the Debtors can continue to operate their business without disruption, the Debtors must maintain their ability to service and maintain their facilities. Should any Utility Provider refuse or discontinue service at any of these locations, even for a brief period, the Debtors’ business operations could be severely disrupted, and such disruption would potentially jeopardize the Debtors’ reputation and, ultimately, ability to maximize value for the benefit of the Debtors’ stakeholders. Accordingly, it is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

10. To the best of the Debtors’ knowledge, they are not in default of any undisputed invoices for prepetition Utility Services. Aside from one natural gas provider which holds a \$50,000 deposit from the Debtors, none of the other Utility Providers hold deposits from the Debtors, nor do the Debtors hold any funds allocated for existing prepayments due with respect to

³ Although the Debtors believe that the Utility Service List includes all of their Utility Providers, the Debtors reserve the right to supplement the list if they have inadvertently omitted any Utility Providers. Additionally, the listing of an entity on the Utility Service List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future. The Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Provider is specifically identified on the Utility Service List.

any Utility Providers. On average, the Debtors pay approximately \$180,000 each month for the Utility Services,⁴ as calculated for the 12-month period ended September 30, 2023.

II. Proposed Adequate Assurance of Payment

11. The Debtors intend to pay all undisputed postpetition charges owed to Utility Providers in the ordinary course of business and in a timely manner. Moreover, the Debtors expect that their available cash, including from the Debtors' debtor-in-possession financing, will be more than sufficient to pay for the Debtors' postpetition use of the Utility Services.

12. Nevertheless, to provide the Utility Providers with additional assurance of payment pursuant to section 366 of the Bankruptcy Code, the Debtors propose to deposit \$90,000 (the "Adequate Assurance Deposit") into an existing, segregated, interest-bearing bank account (the "Adequate Assurance Account") within twenty (20) days of entry of the Order. The Adequate Assurance Deposit is equal to approximately one-half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average third-party utility expenses of the 12-month period ending prior to the Petition Date, plus any additional amounts to account for any newly identified Utility Providers (as further described below). The Debtors will hold the Adequate Assurance Deposit in the Adequate Assurance Account for the duration of the chapter 11 cases, and the deposit may be applied to any postpetition defaults in payment to the Utility Providers. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' cash flow from operations and cash on hand, demonstrates their ability to pay for future Utility Services in accordance with prepetition practice (collectively, the "Adequate Assurance")

⁴ Nearly all of the Debtors' Utility Services are paid on a monthly basis, however water utilities provided at one of the Debtors' properties is paid on a quarterly basis. The Debtors have calculated the average monthly payments for these services even though they are paid on a quarterly basis.

and constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section 366 of the Bankruptcy Code.

13. The Debtors further request that the Adequate Assurance Deposit be automatically available to the Debtors, without further Court order, upon the earlier of (i) the effective date of any chapter 11 plan confirmed in these chapter 11 cases or (ii) the consummation of a sale of all or substantially all of the Debtors' assets. Additionally, if the Debtors terminate any of the Utility Services provided by any Utility Provider or reject any leases with the landlords, the Debtors request that they be permitted to immediately reduce the Adequate Assurance Deposit to reflect the termination of such Utility Service (including under any terminated lease), without further Court order.

III. Proposed Adequate Assurance Procedures

14. Any Utility Provider that is not satisfied with the proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each, an "Adequate Assurance Request") pursuant to the procedures (the "Adequate Assurance Procedures") set forth below:

- a. The Debtors will serve a copy of this motion and the Order on the Utility Providers on the Utility Service List within five (5) business days after entry of the Order.
- b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$90,000, in the Adequate Assurance Account within twenty (20) days after entry of the Order.
- c. Each Utility Provider will be entitled to funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Service List, subject to such Utility Provider's compliance with these procedures.
- d. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to (i) the Debtors, Attn: Christopher

Wiles (wilesc@anagramintl.com) and Alan Dalsass (alan.dalsass@ankura.com); (ii) the Office of the United States Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002; (iii) proposed counsel to the Debtors, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Sunny Singh (sunny.singh@stblaw.com; (212) 455-3470), Nicholas E. Baker (nbaker@stblaw.com; (212) 455-2032), Moshe A. Fink (moshe.fink@stblaw.com; (212) 455-3261), and Ashley Gherlone (ashley.gherlone@stblaw.com; (212) 455-7496); (iv) counsel to the Ad Hoc Group; and (v) counsel to the ABL Agent, Wells Fargo Bank, National Association, Goldberg Kohn Ltd., 55 East Monroe St., Suite 3300, Chicago, IL 60601, Attn: Jeremy M. Downs (jeremy.downs@goldbergkohn.com; (312) 201-3893) and Zachary G. Garrett (zachary.garrett@goldbergkohn.com; (312) 863-7149), and Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770, Attn: William M. Wood III (trey.wood@bracewell.com; (713) 221-1166) (collectively, the “Utility Notice Parties”). The Debtors will honor such request within twenty (20) days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors will replenish the Adequate Assurance Account in the amount so disbursed.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Provider will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases, (iii) the consummation of sale for all or substantially all of the Debtors’ assets.
- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Utility Notice Parties within twenty-one (21) days after the Petition Date.
- g. The Adequate Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) explain why the Utility Provider believes the Adequate Assurance is not adequate assurance of payment; (iv) summarize the Debtors’ payment history related to the affected account(s); and (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Provider to the Debtors, calculated as a historical average over the 12-month period ending prior to the Petition Date.

- h. Unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, the Utility Provider will be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the proposed Adequate Assurance.
- i. The Debtors may, without further order from the Court, resolve an Adequate Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *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, on a confidential basis, to any statutory committee appointed in these cases and the U.S. Trustee upon request.
- j. If the Debtors and the Utility Provider are not able to reach an alternative resolution within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors 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.
- k. Pending resolution of the Determination Hearing, the Utility Provider filing such Adequate Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the proposed Adequate Assurance.
- l. Notwithstanding anything in these procedures to the contrary, the Court shall conduct a hearing within thirty (30) days following the Petition Date to resolve any objections to these procedures or the Proposed Adequate Assurance in the event any are timely filed by the Utility Providers.

IV. Subsequent Modifications to Utility Service List

15. The Debtors have made an extensive and good-faith effort to identify all Utility Providers and include them on the Utility Service List.⁵ To the extent the Debtors subsequently identify additional Utility Providers or discontinue Utility Services, the Debtors seek authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Provider. To the extent the Debtors identify additional Utility Providers, the Debtors shall promptly file serve copies of the order granting this motion on any newly identified Utility Providers. Moreover, the Debtors will increase the amount of the Adequate Assurance Deposit by an amount equal to approximately one-half of one month of the Debtors' average monthly cost of Utility Services to account for any newly identified Utility Providers. The Debtors request that all Utility Providers, including subsequently added Utility Providers to the Utility Service List, be prohibited from altering, refusing, or discontinuing any Utility Services to the Debtors absent further order of the Court.

Relief Requested Should Be Granted

16. The relief requested in this motion will ensure the continuation of the Debtors' business at this critical juncture as they transition into chapter 11. The relief requested also provides the Utility Providers with a fair and orderly procedure for determining requests for additional adequate assurance, without which the Debtors could be forced to address multiple requests by Utility Providers in a disorganized manner when the Debtors' efforts should be more

⁵ To the best of their knowledge, the Debtors have included every known account number for each Utility Provider on the Utility Service List. Upon notice or discovery of additional account numbers, the Debtors will promptly modify the Utility Service List accordingly. Out of an abundance of caution, the Debtors calculated the Adequate Assurance Deposit on a provider basis for each facility to account for each Utility Provider's payment history, even if a specific account number is not listed on the Utility Service List.

productively focused on continuing to operate and restructure their businesses for the benefit of all parties in interest.

I. The Proposed Adequate Assurance Is Sufficient

17. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility company within thirty (30) days of the petition, or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples of what constitutes “assurance of payment.” Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtors’ ability to pay. *See In re Cont’l Common, Inc.*, No. 3:10-CV-2591-O, 2011 WL 13238210, at *5 (N.D. Tex. Feb. 14, 2011) (the statute “requires a determination that a utility is not subject to unreasonable risk of nonpayment, but does not require a guarantee of payment”); *see also In re Tekoil & Gas Corp.*, No. 08-80270G3-11, 2008 WL 2928555, at *2, n.1 (Bankr. S.D. Tex. July 21, 2008) (“[A] debtor may continue to pay a utility, and a utility may continue to provide service, in the absence of an injunction preventing the utility from terminating service.” (citing *In re Viking Offshore (USA) Inc.*, No. 08-31219-H3-11, 2008 WL 782449, at *3, n.3 (Bankr. S.D. Tex. Mar. 20, 2008))); *In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 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”); *In re Caldor, Inc.—NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.—NY*, 117 F.3d 646 (2d Cir. 1997).

18. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to make an informed decision as to whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 82-83 (Bankr. S.D.N.Y. 2002). In determining the level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”).

19. Termination of the Utility Services would result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *See In re Pilgrim’s Pride Corp*, No. 08-45664, 2009 WL 7313309, at *2 (Bankr. N.D. Tex. Jan. 4, 2009) (“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”); *cf. In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321-22 (Bankr. E.D. Pa. 1988) (noting that without utility service, the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”). Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors have a history of paying all utility bills on time and in the ordinary course. The Adequate Assurance Deposit and

the Debtors' ongoing ability to meet obligations as they come due in the ordinary course provide assurance that the Debtors will pay their future obligations to the Utility Providers.

20. Courts have consistently found that adequate assurance of 50% of a debtor's estimated monthly cost or two (2) weeks' estimated utilities cost satisfies the requirements of section 366 of the Bankruptcy Code. *See, e.g., In re Serta Simmons Bedding, LLC*, Case No. 23-90020 (DRJ) (Bankr. S.D. Tex. Jan. 24, 2023) (Docket No. 107); *In re Core Scientific, Inc.*, Case No. 22-90341 (DRJ) (Bankr. S.D. Tex. Jan. 23, 2023) (Docket No. 334); *In re Party City Holdco Inc.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex. Jan. 18, 2023) (Docket No. 109); *In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. May 13, 2022) (Docket No. 199); *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 17, 2021) (Docket No. 42).

21. Further, notwithstanding a determination that the proposed Adequate Assurance constitutes sufficient adequate assurance, the relief requested herein does not adversely affect any rights the Utility Providers believe they have under sections 366(b) and (c)(2) of the Bankruptcy Code. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the proposed Adequate Assurance.

22. In light of the foregoing, the proposed Adequate Assurance is sufficient and should be approved.

II. Adequate Assurance Procedures are Reasonable and Appropriate

23. The Court possesses the power to approve the Adequate Assurance Procedures under section 105(a) of the Bankruptcy Code, which provides that the Court "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Adequate Assurance Procedures are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court

should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve the Adequate Assurance Procedures.

24. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “[t]he plain language of § 366 of the Bankruptcy Code allows the Court to adopt the Procedures set forth in the Utility Order”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.*

25. The Adequate Assurance Procedures set forth a streamlined process for the Utility Providers to address potential concerns with respect to the proposed Adequate Assurance, while at the same time allowing the Debtors to continue their business operations uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Provider to object to the proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties. The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of this Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors will seek Court resolution of the Adequate Assurance Request. Moreover, unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider shall be (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (b) forbidden from discontinuing, altering, or refusing services

to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the proposed Adequate Assurance.

III. The Court Should Authorize the Debtors' Financial Institutions to Honor and Process the Debtors' Payments

26. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, anticipated access to cash collateral, and the proceeds of the DIP Notes Facility and the DIP ABL Facility. Additionally, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

Emergency Consideration

27. Pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm," and Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this motion. An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors' operations. Failure to obtain the requested relief during the first twenty-one (21) days of these chapter 11 cases would imperil the Debtors' restructuring. The Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this motion on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

28. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

29. Nothing contained herein is intended to be or should be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

30. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the ABL Agent and to the agent under the DIP ABL Facility; (d) counsel to the Ad Hoc Group; (e) counsel to the First Lien Notes Trustee; (f) counsel to the Second Lien Notes Trustee; (g) counsel to the PC Noteholder Group; (h) counsel to the trustee under the DIP Notes Facility; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; (m) other regulatory agencies having a regulatory or statutory interest in these cases; (n) the Utility Providers; (o) counsel to Party City; (p) counsel to Barings, LLC, Arnold & Porter Kaye Scholer LLP, 70 West Madison Street Suite 4200, Chicago, IL 60602-4231, Attn: Tyler Nurnberg (Tyler.Nurnberg@arnoldporter.com) and Alex Hevia (alexander.hevia@arnoldporter.com); and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

November 8, 2023

Respectfully submitted,

By: /s/ Tom A. Howley

HOWLEY LAW PLLC

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- and -

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*Proposed Counsel to the Debtors and the Debtors
in Possession*

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Tom A. Howley

Tom A. Howley

Certificate of Service

I certify that on November 8, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Tom A. Howley

Tom A. Howley

SCHEDULE 1**Utility Service List**

Utility Provider	Service Address	Service Provided	Account Number	Proposed Adequate Assurance
CENTERPOINT ENERGY	5300 W 76th Street, Edina, MN 55439	Natural Gas	5505607-1	\$ 1,204.94
CENTERPOINT ENERGY	5300 W 76th Street, Edina, MN 55439	Natural Gas	5505612-1	\$ 1,355.78
CENTERPOINT ENERGY	5300 W 76th Street, Edina, MN 55439	Natural Gas	5505619-6	\$ 1,085.40
CENTERPOINT ENERGY	7678 Executive Drive, Eden Prairie, MN 55344	Natural Gas	11840259-3	\$ 23.62
CENTERPOINT ENERGY	7678 Executive Drive, Eden Prairie, MN 55344	Natural Gas	6400683103-2	\$ 74.98
CENTERPOINT ENERGY	5501 W. Old Shakopee Road, Bloomington, MN 55437	Natural Gas	6403099088-7	\$ 1,627.32
CENTERPOINT ENERGY	5501 W. Old Shakopee Road, Bloomington, MN 55437	Natural Gas	6403099120-8	\$ 3,679.22
CENTERPOINT ENERGY	5501 W. Old Shakopee Road, Bloomington, MN 55437	Natural Gas	6403172437-6	\$ 279.65
CENTURYLINK	5501 W. Old Shakopee Road, Bloomington, MN 55437	Telecommunications	91140020	\$ 401.64
City of Eden Prairie	7700 Anagram Drive, Eden Prairie, MN 55344	Water	0104300047	\$ 608.03
City of Eden Prairie	7700 Anagram Drive, Eden Prairie, MN 55344	Water	0104300054	\$ 11.97
City of Eden Prairie	7700 Anagram Drive, Eden Prairie, MN 55344	Water	0104300070	\$ 12.82
City of Eden Prairie	7700 Anagram Drive, Eden Prairie, MN 55344	Water	0104380049	\$ 149.64
CITY OF EDINA	5300 W 76th Street, Edina, MN 55439	Water	0345047004	\$ 175.45
CITY OF EDINA	5300 W 76th Street, Edina, MN 55439	Water	0345047059	\$ 621.24
CITY OF EDINA	5300 W 76th Street, Edina, MN 55439	Water	0345047148	\$ 8.16
COMCAST	7700 Anagram Drive, Eden Prairie, MN 55344	Telecommunications	708676213	\$ 1,248.61
COMCAST CABLE	5300 W 76th Street, Edina, MN 55439	Telecommunications	8772 10 614 0701529	\$ 138.49
Directv	7700 Anagram Drive, Eden Prairie, MN 55344	Telecommunications	050801486	\$ 135.47
FUZE INC	7700 Anagram Drive, Eden Prairie, MN 55344	Telecommunications	2121	\$ 854.62
IDENTISYS INC	7700 Anagram Drive, Eden Prairie, MN 55344	Security	AI147	\$ 336.46
LEVEL 3 COMMUNICATIONS, LLC	7700 Anagram Drive, Eden Prairie, MN 55344	Telecommunications	316719	\$ 523.03

MCI	7701 Anagram Drive, Eden Prairie, MN 55345	Telecommunications	6P852289	\$ 17.76
Symmetry Energy Solutions, LLC	7700 Anagram Drive, Eden Prairie, MN 55344	Natural Gas	5459288	\$ 7,795.75
VERIZON	7702 Anagram Drive, Eden Prairie, MN 55346	Telecommunications	VS91151666	\$ 219.91
WASTE MANAGEMENT OF MN INC	5300 W 76th Street, Edina, MN 55439	Waste Management	17-47679-73006	\$ 455.83
WASTE MANAGEMENT OF MN INC	7700 Anagram Drive, Eden Prairie, MN 55344	Waste Management	17-81764-23006	\$ 479.35
WASTE MANAGEMENT OF MN INC	5501 W. Old Shakopee Road, Bloomington, MN 55437	Waste Management	27-04336-23007	\$ 64.74
WASTE MANAGEMENT OF MN INC	7700 Anagram Drive, Eden Prairie, MN 55344	Waste Management	17-97698-63004	\$ 14,793.63
WASTE MANAGEMENT OF MN INC	7678 Executive Drive, Eden Prairie, MN 55344	Waste Management	18-93952-23001	\$ 91.82
WASTE MANAGEMENT OF MN INC	1010 6th Ave W, Shakopee, MN 55379-2213	Waste Management	23-20876-13009	\$ 267.14
WASTE MANAGEMENT OF MN INC	5501 W. Old Shakopee Road, Bloomington, MN 55437	Waste Management	25-07730-43001	\$ 754.81
WASTE MANAGEMENT OF MN INC	7700 Anagram Drive, Eden Prairie, MN 55344	Waste Management	26-17506-33002	\$ 545.92
WASTE MANAGEMENT OF MN INC	7700 Anagram Drive, Eden Prairie, MN 55344	Waste Management	23-55035-13003	\$ 497.70
WASTE MANAGEMENT OF MN INC	5300 W 76th Street, Edina, MN 55439	Waste Management	17-87679-73006	\$ 447.42
WASTE MANAGEMENT OF MN INC	5501 W. Old Shakopee Road, Bloomington, MN 55437	Waste Management	27-45106-63008	\$ 495.76
WASTE MANAGEMENT OF MN INC	7700 Anagram Drive, Eden Prairie, MN 55344	Waste Management	27-50395-83004	\$ 718.30
WASTE MANAGEMENT OF MN INC	5501 W. Old Shakopee Road, Bloomington, MN 55437	Waste Management	28-67403-33007	\$ 43.54
XCEL ENERGY	7700 Anagram Drive, Eden Prairie, MN 55344	Electric	51-6304024-8	\$ 40,533.16
XCEL ENERGY	5501 W. Old Shakopee Road, Bloomington, MN 55437	Electric	51-6304024-8	\$ 4,844.68
XCEL ENERGY	5300 W 76th Street, Edina, MN 55439	Electric	51-5158950-7	\$ 1,838.90
XCEL ENERGY	5300 W 76th Street, Edina, MN 55439	Electric	51-7309060-3	\$ 58.02

XCEL ENERGY	7678 Executive Drive, Eden Prairie, MN 55344	Electric	51-0011080699-5	\$ 101.20
TOTAL				\$ 89,621.87

Exhibit A

Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ANAGRAM HOLDINGS, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-90901 (MI)
)
) (Jointly Administered)
)
)
)
) **Re: Docket No. __**

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

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) approving the proposed Adequate Assurance of payment for future utility services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, (c) approving the Adequate Assurance Procedures, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors' service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors' chapter 11 cases are not proposed to be consolidated with the Party City debtors which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

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

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

1. The Adequate Assurance shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
2. The Debtors are authorized, but not directed, to deposit the Adequate Assurance Deposit in the amount of \$90,000 into a segregated bank account for the benefit of the Utility Providers within twenty (20) days after entry of this Order.
3. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Providers to the Debtors.
4. All Utility Providers are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors' proposed Adequate Assurance.
5. The following Adequate Assurance Procedures are hereby approved:

- a. The Debtors will serve a copy of this motion and the Order on the Utility Providers on the Utility Service List within five (5) business days after entry of the Order.
- b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$90,000, in the Adequate Assurance Account within twenty (20) days after entry of the Order.
- c. Each Utility Provider will be entitled to funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Service List, subject to such Utility Provider’s compliance with these procedures.
- d. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to (i) the Debtors, Attn: Christopher Wiles (wilesc@anagramintl.com) and Alan Dalsass (alan.dalsass@ankura.com); (ii) the Office of the United States Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002; (iii) proposed counsel to the Debtors, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Sunny Singh (sunny.singh@stblaw.com; (212) 455-3470), Nicholas E. Baker (nbaker@stblaw.com; (212) 455-2032), Moshe A. Fink (moshe.fink@stblaw.com; (212) 455-3261), and Ashley Gherlone (ashley.gherlone@stblaw.com; (212) 455-7496); (iv) counsel to the Ad Hoc Group; and (v) counsel to the ABL Agent, Wells Fargo Bank, National Association, Goldberg Kohn Ltd., 55 East Monroe St., Suite 3300, Chicago, IL 60601, Attn: Jeremy M. Downs (jeremy.downs@goldbergkohn.com; (312) 201-3893) and Zachary G. Garrett (zachary.garrett@goldbergkohn.com; (312) 863-7149), and Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770, Attn: William M. Wood III (trey.wood@bracewell.com; (713) 221-1166) (collectively, the “Utility Notice Parties”). The Debtors will honor such request within twenty (20) days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors will replenish the Adequate Assurance Account in the amount so disbursed.
- e. The portion of the Adequate Assurance Deposit attributable to each Utility Provider will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases,

- (iii) the consummation of sale for all or substantially all of the Debtors' assets.
- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Utility Notice Parties within twenty-one (21) days after the Petition Date.
 - g. The Adequate Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) explain why the Utility Provider believes the Adequate Assurance is not adequate assurance of payment; (iv) summarize the Debtors' payment history related to the affected account(s); and (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Provider to the Debtors, calculated as a historical average over the 12-month period ending prior to the Petition Date.
 - h. Unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, the Utility Provider will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the proposed Adequate Assurance.
 - i. The Debtors may, without further order from the Court, resolve an Adequate Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *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, on a confidential basis, to any statutory committee appointed in these cases and the U.S. Trustee upon request.
 - j. If the Debtors and the Utility Provider are not able to reach an alternative resolution within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors 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.
 - k. Pending resolution of the Determination Hearing, the Utility Provider filing such Adequate Assurance Request will be prohibited from altering,

refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the proposed Adequate Assurance.

1. Notwithstanding anything in these procedures to the contrary, the Court shall conduct a hearing within thirty (30) days following the Petition Date to resolve any objections to these procedures or the Proposed Adequate Assurance in the event any are timely filed by the Utility Providers.

6. The Utility Providers are prohibited from requiring payment of a deposit or other security for postpetition Utility Services as a result of the Debtors' chapter 11 filing or any outstanding prepetition invoices, other than pursuant to the Adequate Assurance Procedures; *provided, however*, that nothing herein shall prejudice the right of a Utility Provider to object to the Adequate Assurance Procedures or propose alternative procedures.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtors that such entity is or is not a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized, but not directed, following the giving of two-weeks' notice to the affected Utility Provider, and the Debtors having received no objection from any such Utility Provider, to add or remove any Utility Provider from the Utility Service List, and the Debtors shall add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors' average monthly cost for each subsequently added or removed Utility Provider as soon as practicable; *provided* that any additions to the Utility Service List and/or increases to the Adequate Assurance Deposit shall be made within thirty (30) days after the Petition Date. If an objection is received, the Debtors shall request a hearing before this Court at such date that the Debtors and the Utility Provider 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 Service List unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion of such Utility Provider from the Utility Service List, or until any such objection has been resolved consensually or by order of the Court. This Order shall apply to any such Utility Provider that is added to the Utility Service List, but only if the addition is made in sufficient time to comply with the deadlines in section 366 of the Bankruptcy Code. For Utility Providers that are added to the Utility Service List, the Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Provider. Any Utility Provider subsequently added to the Utility Service List shall be bound by the Adequate Assurance Procedures.

9. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider provided there are no outstanding disputes related to postpetition payments due.

10. The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Service List; *provided*, that timely adequate assurance must be posted in favor of all Utility Providers in accordance with the time deadlines in section 366 of the Bankruptcy Code.

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

12. The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to

receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this Order.

13. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in the Motion or this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. Notwithstanding the relief granted in the Motion or this Order, any payment made or to be made by the Debtors pursuant to the authority granted herein, and any relief or authorization granted herein, shall be subject to and in compliance with each interim and final

order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens And Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*, filed substantially contemporaneously herewith (collectively, such interim and final orders, the “DIP Order”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order, the DIP Notes Documents (as defined in the DIP Order), or the DIP ABL Agreement (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

16. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

18. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Houston, Texas

Dated: _____, 2023

UNITED STATES BANKRUPTCY JUDGE