

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

In re:

Boxed, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10397 ([____])

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS (I)(A) APPROVING DEBTORS'
PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT FOR
FUTURE UTILITY SERVICES, (B) APPROVING DEBTORS' PROPOSED
PROCEDURES FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS,
AND (C) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING,
OR DISCONTINUING SERVICES; AND (II) GRANTING RELATED RELIEF**

Boxed, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) hereby submit this motion (this “Motion”), seeking entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and “Final Order,” respectively), granting the relief described below. In support hereof, the Debtors rely on the *Declaration of Mark Zimowski, Chief Financial Officer of Boxed, Inc., in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”² filed concurrently herewith, and further represent as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these Chapter 11 Cases, the Debtors, property of the Debtors’ estates, and these

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Boxed, Inc. (6188); Boxed, LLC (8041); Jubilant LLC (2107); Ashbrook Commerce Solutions LLC (4046); and BOXED MAX LLC (5987). The Debtors’ service address is 61 Broadway, Floor 30, New York, NY 10006.

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

matters 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 February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 366, 1107(a), and 1108 of title 11 of the United States Code, as amended (the “Bankruptcy Code”), Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1(m).

RELIEF REQUESTED

5. The Debtors respectfully request entry of the proposed Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**: (i) (a) approving the Debtors’ proposed form of adequate assurance of payment for future utility services to utility providers (the “Utility Providers”), (b) approving the Debtors’ proposed procedures for resolving additional requests for adequate assurance in substantially the form proposed in the Interim Order (the “Adequate Assurance Procedures”), and (c) prohibiting the Utility Providers from altering, refusing, or discontinuing services; and (ii) granting related relief.

6. The Debtors further respectfully request that the Court schedule a final hearing to consider approval of this Motion on a final basis within thirty (30) days following the Petition Date (defined below), or as soon thereafter as the Court's schedule permits.

BACKGROUND

7. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

8. Each of the Debtors is authorized to operate its business and manage its operations as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' Chapter 11 Cases.

9. The Debtors operate an e-commerce retail service that provides bulk pantry consumables to both business and household customers, as well as on-demand grocery delivery in select zip-codes in New York. To effectively provide this retail service, the Debtors developed a flexible end-to-end e-commerce software, which allow them to exercise full control over the customer experience, and enhance the customer's shopping experience through personalized recommendations, providing samples, and predicting the customer's individual needs. In addition to operating their own retail service, the Debtors further enable e-commerce through its Software & Services business ("Spresso"), by which they offer access to the technology to customers in need of an enterprise level e-commerce platform. Spresso is a unique and advanced technological platform, making it desirable for other retailers, DTC manufacturers, marketplace operators, and other entities. Because of this, the Debtors have been able to market Spresso and develop an

additional revenue stream by offering licensing agreements for other entities to utilize either the full software package or individual components of the Debtors' highly desirable technology.

10. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, filed concurrently herewith and incorporated herein by reference.

UTILITY SERVICES AND THE UTILITY PROVIDERS

11. In connection with the operation of their businesses and management of their properties, the Debtors obtain electricity, natural gas, internet, security, telecom, trash & recycling, waste disposal and other similar services (collectively, the "Utility Services") and, the obligations arising therefrom, the "Utility Obligations") from the Utility Providers. As of the Petition Date, the Debtors have approximately twenty one (21) utility accounts. A list of the Debtors' Utility Providers and the respective Utility Services they provide (the "Utility Provider List") is attached hereto as **Exhibit C**. The relief requested herein pertains to all Utility Providers providing Utility Services to the Debtors and is not limited to those listed on the Utility Provider List.

12. Further, pursuant to some of the of the Debtors' lease agreements, certain Utility Services are billed directly to the Debtors' landlords and passed through to the Debtors as part of the Debtors' lease payments in the ordinary course of business.

13. The Debtors require the Utility Services to properly maintain and support their ongoing business operations. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted. Such disruption would adversely affect, among other things, customer goodwill and employee relations, which, in turn, would jeopardize the Debtors' efforts to conduct a value-maximizing sale process for the

Debtors' estates and all of their stakeholders. It is imperative that the Utility Services continue uninterrupted during these Chapter 11 Cases.

14. Prior to the Petition Date, the Debtors paid on average approximately \$35,195.17 per month for Utility Services based on historical average payments for the twelve (12)-month period ended February 28, 2023.

PROPOSED ADEQUATE ASSURANCE AND RELATED PROCEDURES

I. Proposed Adequate Assurance.

15. The Debtors intend to pay all timely undisputed postpetition obligations owed to the Utility Providers. The Debtors believe that cash held by the Debtors and cash generated in the ordinary course of business will provide sufficient liquidity for the Debtors to pay their postpetition Utility Obligations in the ordinary course of business.

16. While the Debtors believe that the foregoing may be sufficient to satisfy the requirements under section 366 of the Bankruptcy Code, as additional assurance of payment, the Debtors propose to, within five (5) days of the Petition Date, place a deposit equal to approximately two (2) weeks of the Debtors' average monthly cost of Utility Services, \$18,296.24 (the "Utility Deposit") into a segregated account (the "Utility Deposit Account") for the benefit of each Utility Provider (the "Proposed Adequate Assurance").

17. The Utility Deposit Account will be maintained by Debtor Boxed, LLC at Silicon Valley Bank for the duration of these Chapter 11 Cases to serve as adequate assurance of performance for the benefit of the Utility Providers and may be applied to any postpetition defaults in payment to the Utility Providers. During the pendency of these Chapter 11 Cases, the Debtors propose to adjust the amount in the Utility Deposit Account to reflect factors including (a) termination of Utility Services by the Debtors, regardless of any Additional Assurance Request

(as defined below) and (b) agreements reached with Utility Providers. These adjustments will permit the Debtors to maintain the Utility Deposit Account that consistently provides the Utility Providers with a two (2)-week deposit on account of such services. None of the Debtors' creditors will have any lien on the Utility Deposit or the Utility Deposit Account; *provided, however*, that to the extent amounts in the Utility Deposit Account are no longer necessary to provide adequate assurance to the Utility Providers, such amounts shall be immediately transferred into an account on which the Prepetition First Lien Secured Lenders' liens attach, and, in any event, the Prepetition First Lien Secured Lenders shall have a first priority security interest in any residual interest in the Utility Deposit Account, unless those liens have been indefeasibly paid in full, in cash.

18. The Debtors submit that the Proposed Adequate Assurance constitutes sufficient adequate assurance to the Utility Providers for the provision of future Utility Services in full satisfaction of section 366 of the Bankruptcy Code.

II. Proposed Adequate Assurance Procedures.

19. Although the Debtors do not believe that any adequate assurance beyond that proposed in this Motion is necessary, the Debtors propose that any Utility Provider that is dissatisfied with the Proposed Adequate Assurance be required to make a request for additional assurance (an "Additional Assurance Request") pursuant to the following Adequate Assurance Procedures:

- a) Within forty-eight (48) hours after the date of entry of the Interim Order, the Debtors will serve by first class mail a copy of the Motion and the Interim Order to the Utility Providers on the Utility Provider List.
- b) If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve an Additional Assurance Request upon (i) the Debtors, Boxed, Inc., (Attn: Jung Choi, email: jung@boxed.com); (ii) proposed co-counsel to the Debtors, Freshfields, Bruckhaus Deringer US LLP, 601 Lexington Avenue, 31st Floor, New York, NY 10022 (Attn: Alexander Rich, email: alexander.rich@freshfields.com), and Potter Anderson Corroon LLP, 1313 N. Market Street, Wilmington, DE 19899

(Attn: Katelin A. Morales, email: kmorales@potteranderson.com); (iii) counsel to the Prepetition First Lien Secured Lenders, Orrick Herrington & Sutcliffe, 51 W 52nd Street, New York, NY 10019 (Attn: Raniero D'Aversa, Jr., email: rdaversa@orrick.com) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Domenic Pacitti, email: dpacitti@klehr.com; Richard Beck, email: rbeck@klehr.com); (iv) counsel to the Prepetition First Lien Agent, Holland & Knight LLP, 150 N. Riverside Plaza, Suite 2700, Chicago, IL 60606 (Attn: Phillip Nelson, email: phillip.nelson@hklaw.com); and (v) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the "Adequate Assurance Notice Parties"). To the extent any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- c) Each Additional Assurance Request must (a) be made in writing, (b) set forth the amount and form of additional assurance of payment requested, (c) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided, (d) include a summary of the Debtors' payment history to such Utility Provider relevant to the affected account(s), including whether the Utility Provider holds any deposits or other security, and if so, in what amount, and (e) set forth why the Utility Provider believes the Proposed Adequate Assurance is insufficient.
- d) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors, in consultation with the Prepetition First Lien Agent, shall have the greater of (i) fourteen (14) days from the receipt of such Additional Assurance Request and (ii) thirty (30) days from the entry of the Interim Order (the "Resolution Period") to negotiate with the requesting Utility Provider and attempt to resolve its Additional Assurance Request. The Debtors and the Utility Provider may, without notice to any party in interest or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.
- e) Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request, the Debtors shall, upon reasonable notice, request a hearing before the Court to determine the adequacy of assurance of payment (the "Adequate Assurance Dispute") pursuant to section 366(c)(3) of the Bankruptcy Code.
- f) Any Utility Provider that makes an Additional Assurance Request is prohibited from altering, refusing, or discontinuing service, including as a result of unpaid charges for prepetition services, pending resolution of such Additional Assurance Request by agreement, or order of this Court.
- g) The Debtors may, in consultation with the Prepetition First Lien Agent, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest and may, in connection with any such agreement, provide a Utility Provider

with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent that the Debtors believe that 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 Utility Deposit by an amount not exceeding the requesting Utility Provider's estimated two (2)-week utility expense.

- h) Upon the closure of one of the Debtors' locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Utility Deposit then attributable to the applicable Utility Provider; *provided* that for any Utility Provider for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Provider in full for, and there are no pending disputes regarding, any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.
- i) Absent compliance with the Adequate Assurance Procedures and the terms of the Interim Order and the Final Order, as applicable, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these Chapter 11 Cases and/or any unpaid charges for prepetition services provided to any of the Debtors, and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

20. The Debtors submit that the Utility Deposits to be held in the Utility Deposit Account constitute adequate assurance to the Utility Providers. Accordingly, the Debtors request that, from and after entry of the Interim Order, any Utility Provider that fails to serve upon the Adequate Assurance Notice Parties an Additional Assurance Request or file an Objection (as defined below) to this Motion, as described below, be deemed to have (a) received adequate assurance of payment as required by section 366 of the Bankruptcy Code and be prohibited from altering, refusing, or discontinuing Utility Services, including as a result of unpaid charges for prepetition Utility Services, and (b) waived any right to seek additional adequate assurance during the course of these Chapter 11 Cases, except as provided in section 366(c)(3) of the Bankruptcy Code.

III. Subsequent Modifications of the Utility Provider List and Procedures for Subsequently Identified Utility Providers.

21. Although the Debtors have made a diligent and good faith effort to identify all of the Debtors' Utility Services on the Utility Provider List, certain Utility Providers may have been inadvertently omitted. To the extent the Debtors identify additional Utility Providers, the Debtors seek authority, in consultation with the Prepetition First Lien Agent, to amend or supplement the Utility Provider List. The Debtors will file any such amendments and serve copies of the Motion, and the Interim Order or the Final Order (as applicable) on such newly identified Utility Providers (each, a "Subsequently Identified Utility Provider").

22. The Debtors request that any entered orders relating to the Motion be binding on all Utility Providers, regardless of when any particular Utility Provider was added to the Utility Provider List.

23. In addition, the Debtors propose that any Subsequently Identified Utility Provider have the right to make an Additional Assurance Request on the Adequate Assurance Notice Parties after it receives notice of the Motion. Any such request must be actually received by the Adequate Assurance Notice Parties. If no Additional Assurance Request is made, the Debtors propose that the provisions of the Interim Order or Final Order, whichever is in effect, apply to the Subsequently Identified Utility Provider. Should any Subsequently Identified Utility Provider make an Additional Assurance Request, the Debtors request that such Subsequently Identified Utility Provider be prohibited from discontinuing, altering, or refusing service to the Debtors, including as a result of unpaid charges for prepetition services, pending resolution of such request.

IV. Prohibition on Altering, Refusing, or Discontinuing Service.

24. Pending the entry of the Interim Order and the Final Order with respect to this Motion and pending resolution of any Additional Assurance Request, the Debtors respectfully

request that the Utility Providers, including the Subsequently Identified Utility Providers, be prohibited from (a) discriminating against the Debtors, (b) altering, refusing, or discontinuing service to the Debtors, or (c) requiring payment of a deposit or receipt or any other security for continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices.

BASIS FOR RELIEF

I. The Proposed Adequate Assurance Provides Utility Providers with Adequate Assurance of Payment.

25. Section 366(a) of the Bankruptcy Code provides that a “utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title” or for late payment for service provided before an order for relief. 11 U.S.C. § 366(a). Section 366(b) of the Bankruptcy Code goes on to provide, however, that the utility provider may “alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date.” 11 U.S.C. § 366(b). Section 366(c)(2) of the Bankruptcy Code further provides that in a case filed under chapter 11 of the Bankruptcy Code, a utility provider may alter or discontinue service if, “during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2). Section 366(c)(1)(A) of the Bankruptcy Code defines “assurance of payment” to include, among other things, “a cash deposit.” 11 U.S.C. § 366(c)(1)(A)(i).

26. Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of a debtor’s ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at *5 (Bankr. 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.*, 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) (“Section 366(b) requires . . . adequate assurance of payment. The statute does not require an absolute guarantee of payment.”) (internal quotation and citation omitted); *In re Anchor Glass Container Corp.*, 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005) (finding that section 366 of the Bankruptcy Code “does not require a guarantee of payment”).

27. 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 Mass. Elec. Co. v. Keydata Corp. (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)) (stating that the meaning of “adequate assurance of payment . . . depends upon the facts and circumstances of each case, keeping in mind the intent of Congress to protect the utility provider while preventing discrimination against the debtor”); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002) (finding that “the heart of the inquiry . . . is the examination of the totality of the circumstances to make an informed judgment as to whether or not the utilities would be subject to an unreasonable risk of payment”).

28. Courts have recognized that, in determining the requisite 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

the 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"). Additionally, the Court is not bound by state or local regulations that set adequate assurance of payment postpetition. *In re Begley*, 41 B.R. 402, 405–06 (Bankr. D. Pa. 1984); *see also 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"). Accordingly, demands by a utility provider for a guarantee of payment should be refused when the debtor's specific circumstances already afford adequate assurance of payment.

29. Here, the Debtors respectfully submit that the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors are placing a deposit equal to approximately two (2) weeks of the Debtors' average monthly cost of Utility Services into the Utility Deposit Account for the benefit of any Utility Provider that requests its *pro rata* portion of the Utility Deposit. *See Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at **2, 5, & 10 (affirming bankruptcy court's finding that utility providers were adequately assured payment through a two (2) week cash deposit). The Utility Deposit and the Debtors' ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtors' payment of their future obligations. Accordingly, the Proposed Adequate Assurance provides the Utility Providers with adequate assurance of payment consistent with the requirements of sections 366(b) and 366(c)(1)(A)(i) of the Bankruptcy Code, to the extent applicable.

30. Moreover, the Proposed Adequate Assurance comports with the policy underlying section 366 of the Bankruptcy Code, which is to protect debtors from utility service cutoffs upon

the filing of a bankruptcy case, while also providing utility companies with adequate assurance that the debtor will pay for postpetition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306; *see also In re Jones*, 369 B.R. 745, 748 (B.A.P. 1st Cir. 2007) (“The purpose of § 366 is ‘to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid.’”) (quoting *Begley v. Phila. Elec. Co.*, 760 F.2d 46, 49 (3d Cir. 1985)).

II. The Debtors’ Proposed Adequate Assurance Procedures Properly Balance the Interests of the Utility Providers and Those of the Debtors and Their Estates.

31. Uninterrupted Utility Services are essential to the Debtors’ ongoing business operations and, hence, the overall success of these Chapter 11 Cases. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted. Such disruption would adversely affect, among other things, customer goodwill and employee relations, which, in turn, would jeopardize the Debtors’ efforts to conduct a value-maximizing sale process for the Debtors’ estates and all of their stakeholders. Accordingly, it is essential that the Utility Services continue uninterrupted during these Chapter 11 Cases.

32. The Debtors’ proposed Adequate Assurance Procedures provide the Utility Providers with a fair and orderly process for seeking modification of the Proposed Adequate Assurance while protecting the Debtors from being forced to address numerous Additional Assurance Requests in a disorganized manner and at a time when the Debtors’ efforts could be more productively focused on the seamless continuation of their operations and reorganization in chapter 11.

33. Here, notwithstanding the Debtors’ belief that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under

sections 366(b) and (c)(2) of the Bankruptcy Code are wholly preserved by the Adequate Assurance Procedures. *See In re Circuit City Stores, Inc.*, No. 08–35653, 2009 WL 484553 at *6 (Bankr. E.D. Va. Jan. 14, 2009) (adopting similar adequate assurance procedures and holding that “notwithstanding [a] determination on an interim basis that the adequate assurance proposed by the [d]ebtors constitute[d] sufficient adequate assurance under 366(b), [the] utility companies . . . [could still] exercise their rights under 366(c)(2) in accordance with the [procedures] established by the [c]ourt”). The Utility Providers still may choose, in accordance with the established Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *Id.* at *6. On the other hand, the Adequate Assurance Procedures avoid a haphazard and chaotic process whereby each Utility Provider could make an extortionate, last-minute demand for adequate assurance, which the Debtors would be pressured to pay under the threat of losing critical Utility Services. *Id.*

34. The Adequate Assurance Request Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to “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). As a result, the Court should grant the relief requested herein.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

35. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bank. P. 6003; *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Third Circuit has instructed that irreparable harm is that which “cannot be redressed

by a legal or an equitable remedy following a trial.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

36. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

37. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors. Any payment made pursuant to an order of the Court granting the relief requested herein

is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

38. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware, Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov); (b) the United States Attorney's Office for the District of Delaware; (c) the state attorneys general for all states in which the Debtors conduct business; (d) the Internal Revenue Service; (e) the holders of the twenty (20) largest unsecured claims against the Debtors on a consolidated basis; (f) Orrick, Herrington & Sutcliffe LLP and Klehr Harrison Harvey Branzburg LLP, counsel to the Prepetition First Lien Secured Lenders; (g) Holland & Knight LLP, counsel to the Prepetition First Lien Agent; (h) banks and financial institutions where the Debtors maintain accounts; (i) Utility Providers listed on the Utility Provider List; (j) counsel to any statutory committee appointed in the Chapter 11 Cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

NO PRIOR REQUEST

39. No prior request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Interim Order and the Final Order, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: April 2, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Jeremy W. Ryan

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

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

In re:

Boxed, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10397 ([____])

(Joint Administration Requested)

Docket No. ____

**INTERIM ORDER (I)(A) APPROVING
DEBTORS' PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES,
(B) APPROVING DEBTORS' PROPOSED PROCEDURES
FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS, AND
(C) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING,
OR DISCONTINUING SERVICES; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the Debtors for entry of this interim order (the "Order") and a final order (i)(a) approving the Debtors' proposed form of adequate assurance of payment for future utility services to utility companies (the "Utility Providers"), (b) approving the Debtors' proposed procedures for resolving requests for adequate assurance in substantially the form proposed in this Order (the "Adequate Assurance Procedures"), and (c) prohibiting the Utility Providers from altering, refusing, or discontinuing services, and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Boxed, Inc. (6188); Boxed, LLC (8041); Jubilant LLC (2107); Ashbrook Commerce Solutions LLC (4046); and BOXED MAX LLC (5987). The Debtors' service address is 61 Broadway, Floor 30, New York, NY 10006.

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

28 U.S.C. § 157(b)(2); and this Court having found that venue of these cases and this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; 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 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 reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing on the Motion (the "Final Hearing") is set for _____, 2023 at ____:____ a.m./p.m. (prevailing Eastern Time). Any objections or responses to the entry of the proposed Final Order shall be filed on or before 4:00 p.m. (prevailing Eastern Time) seven (7) days before the Final Hearing, on _____, 2023 (the "Objection Deadline"), and shall be served on the following parties or their respective counsel on or before the Objection Deadline: (i) proposed co-counsel to the Debtors, Freshfields, Bruckhaus Deringer US LLP, 601 Lexington Avenue, 31st Floor, New York, NY 10022 (Attn: Madlyn Primoff, email: madlyn.primoff@freshfields.com), and Potter Anderson Corroon LLP, 1313 N. Market Street, Wilmington, DE 19801 (Attn: Katelin A. Morales, email: kmorales@potteranderson.com); (ii) Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman, email:

Benjamin.a.hackman@usdoj.gov)); (iii) counsel to the Prepetition First Lien Secured Lenders, Orrick, Herrington & Sutcliffe LLP (Attn: Raniero D'Aversa, Jr., address: 51 West 52nd Street, New York, NY 10019, email: rdaversa@orrick.com; Nicholas Sabatino, address: 400 Capitol Mall, Suite 3000, Sacramento, CA, 95814, email: nsabatino@orrick.com) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Domenic Pacitti, email: dpacitti@klehr.com; Richard Beck, email: rbeck@klehr.com); (iv) counsel to the Prepetition First Lien Agent, Holland & Knight LLP, 150 N. Riverside Plaza, Suite 2700, Chicago, IL 60606 (Attn: Phillip Nelson, email: phillip.nelson@hklaw.com); and (v) counsel for any statutory committee appointed in these Chapter 11 Cases. If no objections or responses are filed and served by the Objection Deadline, the Court may enter the Final Order without further notice or hearing.

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 will, within five (5) days of the Petition Date, place a deposit equal to approximately two (2) weeks of the Debtors' average monthly cost of Utility Services, \$18,296.24 (the "Utility Deposit") into a segregated account (the "Utility Deposit Account") for the benefit of each Utility Provider (the "Proposed Adequate Assurance"). The Proposed Adequate Assurance shall not be subject to any liens; *provided, however*, that to the extent amounts in the Utility Deposit Account are no longer necessary to provide adequate assurance to the Utility Providers, such amounts shall be immediately transferred into an account on which the Prepetition First Lien Secured Lenders' liens attach, and, in any event, the Prepetition First Lien Secured Lenders shall

have a first priority security interest in any residual interest in the Utility Deposit Account, unless those liens have been indefeasibly paid in full, in cash.

5. The Proposed Adequate Assurance constitutes “adequate assurance of payment” for purposes of section 366 of the Bankruptcy Code and comprises the Utility Deposit and the Debtors’ ability to pay for future utility services in the ordinary course of business.

6. The following Adequate Assurance Procedures for any Utility Provider not satisfied with the Proposed Adequate Assurance to request additional adequate assurance (an “Additional Assurance Request”) are approved on an interim basis:

- a) Within forty-eight (48) hours after the date of entry of the Interim Order, the Debtors will serve by first class mail a copy of the Motion and the Interim Order to the Utility Providers on the Utility Provider List.
- b) If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve an Additional Assurance Request upon (i) the Debtors, Boxed, Inc., (Attn: Jung Choi, email: jung@boxed.com); (ii) proposed co-counsel to the Debtors, Freshfields, Bruckhaus Deringer US LLP, 601 Lexington Avenue, 31st Floor, New York, NY 10022 (Attn: Alexander Rich, email: alexander.rich@freshfields.com), and Potter Anderson Corroon LLP, 1313 N. Market Street, Wilmington, DE 19899 (Attn: Katelin A. Morales, email: kmorales@potteranderson.com); (iii) counsel to the Prepetition First Lien Secured Lenders, Orrick Herrington & Sutcliffe, 51 W 52nd Street, New York, NY 10019 (Attn: Raniero D’Aversa, Jr., email: rdaversa@orrick.com) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Domenic Pacitti, email: dpacitti@klehr.com; Richard Beck, email: rbeck@klehr.com); (iv) counsel to the Prepetition First Lien Agent, Holland & Knight LLP, 150 N. Riverside Plaza, Suite 2700, Chicago, IL 60606 (Attn: Phillip Nelson, email: phillip.nelson@hklaw.com); and (v) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the “Adequate Assurance Notice Parties”). To the extent any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- c) Each Additional Assurance Request must (a) be made in writing, (b) set forth the amount and form of additional assurance of payment requested, (c) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided, (d) include a summary of the Debtors' payment history to such Utility Provider relevant to the affected account(s), including whether the Utility Provider holds any deposits or other security, and if so, in what amount, and (e) set forth why the Utility Provider believes the Proposed Adequate Assurance is insufficient.
- d) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors, in consultation with the Prepetition First Lien Agent, shall have the greater of (i) fourteen (14) days from the receipt of such Additional Assurance Request and (ii) thirty (30) days from the entry of the Interim order (the "Resolution Period") to negotiate with the requesting Utility Provider and attempt to resolve its Additional Assurance Request. The Debtors and the Utility Provider may, without notice to any party in interest or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.
- e) Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request, the Debtors shall, upon reasonable notice, request a hearing before the Court to determine the adequacy of assurance of payment (the "Adequate Assurance Dispute") pursuant to section 366(c)(3) of the Bankruptcy Code.
- f) Any Utility Provider that makes an Additional Assurance Request is prohibited from altering, refusing, or discontinuing service, as a result of unpaid charges for prepetition services, pending resolution of such Additional Assurance Request by agreement or order of this Court.
- g) The Debtors may, in consultation with the Prepetition First Lien Agent, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent that the Debtors believe that 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 Utility Deposit by an amount not exceeding the requesting Utility Provider's estimated two (2)-week utility expense.

- h) Upon the closure of one of the Debtors' locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Utility Deposit then attributable to the applicable Utility Provider; *provided* that for any Utility Provider for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Provider in full for, and there are no pending disputes regarding, any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.
- i) Absent compliance with the Adequate Assurance Procedures and the terms of this Interim Order, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these Chapter 11 Cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in consultation with the Prepetition First Lien Agent, to amend **Exhibit C** attached to the Motion to add or remove any Utility Provider, and this Order shall apply to any such Subsequently Identified Utility Provider that is added to such schedule and served with this Order. Any such amended schedule shall be filed with the Court, and the Utility Deposit will be increased for each Subsequently Identified Utility Provider. The Debtors shall serve a copy of this Order on any Subsequently Identified Utility Provider, along with an amended **Exhibit C**, and such Subsequently Identified Utility Provider shall be permitted to make an Additional Assurance Request according to the procedures set forth herein. The Debtors shall provide two weeks' notice to any Utility Provider before removing them from **Exhibit C**. The rights of a Utility Provider to contest or seek other relief in response to the Debtors' actions under this paragraph are reserved.

8. Pending entry of the Final Order and pending resolution of any Additional Assurance Request, the Utility Providers, including the Subsequently Identified Utility Providers, shall be prohibited from (a) discriminating against the Debtors, (b) altering, refusing, or discontinuing service to the Debtors, or (c) requiring payment of a deposit or receipt or any other

security for continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices; *provided, however*, that the foregoing does not affect the rights of Utility Providers under section 366(c)(4) of the Bankruptcy Code.

9. For the avoidance of doubt, the terms of this Order, including the Adequate Assurance Procedures, shall apply in accordance with its terms to each Utility Provider, notwithstanding any customary business practices, policies, internal operating procedures, or state or local laws or regulations to the contrary. Any Utility Provider that believes its customary business practices, policies, internal operating procedures, or state or local laws or regulations forbid it from accepting the Proposed Adequate Assurance or entitle it to additional adequate assurance shall make an Additional Assurance Request or file an Objection in accordance with this Order.

10. Notwithstanding anything to the contrary in any other order of this Court, the interests of any party, including but not limited to the Debtors' pre-petition lenders, in, or lien on, the Adequate Assurance Deposit shall be subordinate to the Utility Providers' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to paragraph 6(h) of this Order, or as otherwise ordered by the Court.

11. Nothing herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on **Exhibit C** attached to the Motion, and the Debtors reserve all rights and defenses with respect thereto.

12. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

13. Nothing in this Order nor any actions taken hereunder: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors; or (e) shall create, or is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Any payment made pursuant to this Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

14. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

15. 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 any payment to the Utility Providers.

16. The requirements of Bankruptcy Rule 6003 are satisfied.

17. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof, and notice of the Motion as provided therein shall be deemed good and sufficient pursuant to the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

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

EXHIBIT B

Final Order

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

In re:

Boxed, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10397 ([____])

(Joint Administration Requested)

Docket No. ____

**FINAL ORDER (I)(A) APPROVING
DEBTORS' PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES,
(B) APPROVING DEBTORS' PROPOSED PROCEDURES
FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS, AND
(C) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING,
OR DISCONTINUING SERVICES; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the Debtors for entry of an interim order and this final order (the "Order") (i)(a) approving the Debtors' proposed form of adequate assurance of payment for future utility services to utility companies (the "Utility Providers"), (b) approving the Debtors' proposed procedures for resolving requests for adequate assurance in substantially the form proposed in this Order (the "Adequate Assurance Procedures"), and (c) prohibiting the Utility Providers from altering, refusing, or discontinuing services, and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Boxed, Inc. (6188); Boxed, LLC (8041); Jubilant LLC (2107); Ashbrook Commerce Solutions LLC (4046); and BOXED MAX LLC (5987). The Debtors' service address is 61 Broadway, Floor 30, New York, NY 10006.

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

28 U.S.C. § 157(b)(2); and this Court having found that venue of these cases and this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; 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 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 reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. 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.
3. Except as the amount may be reduced by application of the provisions of the Interim Order, Utility Deposits in the aggregate amount of \$18,296.24 deposited in the Utility Deposit Account shall be held for the purpose of providing adequate assurance of payment to each Utility Provider for its postpetition Utility Services to the Debtors. The Proposed Adequate Assurance shall not be subject to any liens; *provided, however*, that to the extent amounts in the Utility Deposit Account are no longer necessary to provide adequate assurance to the Utility Providers, such amounts shall be immediately transferred into an account on which the Prepetition First Lien Secured Lenders' liens attach, and, in any event, the Prepetition First Lien Secured Lenders shall

have a first priority security interest in any residual interest in the Utility Deposit Account, unless those liens have been indefeasibly paid in full, in cash.

4. The Proposed Adequate Assurance constitutes “adequate assurance of payment” for purposes of section 366 of the Bankruptcy Code, and comprises the Utility Deposit and the Debtors’ ability to pay for future utility services in the ordinary course of business.

5. The following Adequate Assurance Procedures for any Utility Provider not satisfied with the Proposed Adequate Assurance to request additional adequate assurance (an “Additional Assurance Request”) are approved on a final basis:

- a) Within forty-eight (48) hours after the date of entry of the Final Order, the Debtors will serve by first class mail a copy of the Motion and the Final Order to the Utility Providers on the Utility Provider List.
- b) If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve an Additional Assurance Request upon (i) the Debtors, Boxed, Inc., (Attn: Jung Choi, email: jung@boxed.com); (ii) proposed co-counsel to the Debtors, Freshfields, Bruckhaus Deringer US LLP, 601 Lexington Avenue, 31st Floor, New York, NY 10022 (Attn: Alexander Rich, email: alexander.rich@freshfields.com), and Potter Anderson Corroon LLP, 1313 N. Market Street, Wilmington, DE 19899 (Attn: Katelin A. Morales, email: kmorales@potteranderson.com); (iii) counsel to the Prepetition First Lien Secured Lenders, Orrick Herrington & Sutcliffe, 51 W 52nd Street, New York, NY 10019 (Attn: Raniero D’Aversa, Jr., email: rdaversa@orrick.com) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Domenic Pacitti, email: dpacitti@klehr.com; Richard Beck, email: rbeck@klehr.com); (iv) counsel to the Prepetition First Lien Agent, Holland & Knight LLP, 150 N. Riverside Plaza, Suite 2700, Chicago, IL 60606 (Attn: Phillip Nelson, email: phillip.nelson@hklaw.com); and (v) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the “Adequate Assurance Notice Parties”). To the extent any utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- c) Each Additional Assurance Request must (a) be made in writing, (b) set forth the amount and form of additional assurance of payment requested, (c) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided, (d) include a summary of the Debtors' payment history to such Utility Provider relevant to the affected account(s), including whether the Utility Provider holds any deposits or other security, and if so, in what amount, and (e) set forth why the Utility Provider believes the Proposed Adequate Assurance is insufficient.
- d) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors, in consultation with the Prepetition First Lien Agent, shall have the greater of (i) fourteen (14) days from the receipt of such Additional Assurance Request and (ii) thirty (30) days from the entry of the Interim order (the "Resolution Period") to negotiate with the requesting Utility Provider and attempt to resolve its Additional Assurance Request. The Debtors and the Utility Provider may, without notice to any party-in-interest or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.
- e) Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request, the Debtors shall, upon reasonable notice, request a hearing before the Court to determine the adequacy of assurance of payment (the "Adequate Assurance Dispute") pursuant to section 366(c)(3) of the Bankruptcy Code.
- f) Any Utility Provider that makes an Additional Assurance Request is prohibited from altering, refusing, or discontinuing service, as a result of unpaid charges for prepetition services, pending resolution of such Additional Assurance Request by agreement or order of this Court.
- g) The Debtors may, in consultation with the Prepetition First Lien Agent, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent that the Debtors believe that 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 Utility Deposit by an amount not exceeding the requesting Utility Provider's estimated two (2)-week utility expense.

- h) Upon the closure of one of the Debtors' locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Utility Deposit then attributable to the applicable Utility Provider; *provided* that for any Utility Provider for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Provider in full for, and there are no pending disputes regarding, any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.
- i) Absent compliance with the Adequate Assurance Procedures and the terms of this Final Order, as applicable, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

6. The Debtors are authorized, in consultation with the Prepetition First Lien Agent, to amend **Exhibit C** attached to the Motion to add or remove any Utility Provider, and this Order shall apply to any such Subsequently Identified Utility Provider that is added to such schedule and served with this Order. Any such amended schedule shall be filed with the Court, and the Utility Deposit will be increased for each Subsequently Identified Utility Provider. The Debtors shall serve a copy of this Order on any Subsequently Identified Utility Provider, along with an amended **Exhibit C**, and such Subsequently Identified Utility Provider shall be permitted to make an Additional Assurance Request according to the procedures set forth herein. The Debtors shall provide two weeks' notice to any Utility Provider before removing them from **Exhibit C**. The rights of a Utility Provider to contest or seek other relief in response to the Debtors' actions under this paragraph are reserved.

7. The Utility Providers, including Subsequently Identified Utility Providers, shall be prohibited from (a) discriminating against the Debtors; (b) altering, refusing, or discontinuing service to the Debtors; or (c) requiring payment of a deposit or receipt or any other security for

continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices; *provided, however*, that the foregoing does not affect the rights of Utility Providers under section 366(c)(4) of the Bankruptcy Code.

8. For the avoidance of doubt, the terms of this Order, including the Adequate Assurance Procedures, shall apply in accordance with its terms to each Utility Provider, notwithstanding any customary business practices, policies, internal operating procedures, or state or local laws or regulations to the contrary. Any Utility Provider that believes its customary business practices, policies, internal operating procedures, or state or local laws or regulations forbid it from accepting the Proposed Adequate Assurance or entitle it to additional adequate assurance shall make an Additional Assurance Request or file an Objection in accordance with this Order.

9. Notwithstanding anything to the contrary in any other order of this Court, the interests of any party, including but not limited to the Debtors' prepetition lenders, in, or lien on, the Adequate Assurance Deposit shall be subordinate to the Utility Providers' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to paragraph 5(h) of this Order, or as otherwise ordered by the Court.

10. Nothing herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on **Exhibit C** attached to the Motion, and the Debtors reserve all rights and defenses with respect thereto.

11. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

12. Nothing in this Order nor any actions taken hereunder: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors; or (e) shall create, or is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Any payment made pursuant to this Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

14. 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 any payment to the Utility Providers.

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

16. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof, and notice of the Motion as provided therein shall be deemed good and sufficient pursuant to the requirements of Bankruptcy Rule 6004(a) and the Local Rules.

17. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

EXHIBIT C¹**Utility Provider List**

Utility Provider	Address	Account Number(s)	Description of Utility Service	Cost of Utility Services for Last Twelve Months (\$)	Adequate Assurance Deposit (\$)
CoServ	PO Box 734803 Dallas, TX 75373	9001172608	Electricity	\$2,096.76	\$87.37
Reliant Energy	PO Box 650475 Dallas, TX 75268	725870216	Electricity	\$63,722.84	\$2,655.12
PSE&G	PO Box 14444 New Brunswick, NJ 08906	4242253400	Electricity & Gas	\$119,467.98	\$4,977.83
Elizabethtown Gas	PO Box 6031 Bellmawr, NJ 08099	837753161	Gas	\$24,467.86	\$1,019.49
NV Nevada Energy	6226 West Sahara Ave. Las Vegas, NV 89146	3000312678117970000 3000312678117979057 3000312678118418303	Gas	\$29,311.63	\$1,221.32
365 Data Centers	200 Connecticut Avenue, Suite 5A Norwalk, CT 06854	3569	Internet	\$82,795.25	\$3,449.80

¹ The inclusion of any entity on, or the omission of any entity from, this **Exhibit C** is not 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 with respect to any such determination. Additionally, although this **Exhibit C** is intended to be comprehensive and the Debtors have, in good faith, diligently tried to identify all of their Utility Providers, the Debtors may have inadvertently omitted one or more Utility Providers. Pursuant to the Motion, the Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Provider is specifically identified on this **Exhibit C**.

Utility Provider	Address	Account Number(s)	Description of Utility Service	Cost of Utility Services for Last Twelve Months (\$)	Adequate Assurance Deposit (\$)
Lumen Technologies	100 CenturyLink Drive Monroe, LA 71203	88026777	Internet	\$5,812.00	\$242.17
Protection 1 Security Solutions	4321 W Sam Houston Pkwy N #170, Houston, TX 77043	8629354574 61683595	Security	\$14,025.27	\$584.39
OOMA, Inc.	P.O. Box 1689 Helotes, TX 78023	702-333-2671 972-954-1210	Telecom	\$696.74	\$29.03
Waste Connections of New York, Inc.	2630 Park Avenue Bronx, NY 10451	101053367	Trash & Recycling	\$11,976.91	\$1,197.69
Republic Services	18500 N Allied Way Phoenix, AZ 85054	306200607306 306150115477	Waste Disposal	\$8,750.87	\$364.62
T-Mobile	12920 Se 38th St., Bellevue, WA 98006	980956361	Cell Phones for bike delivery	\$21,386.16	\$891.09
Spectrum	1600 Dublin Road, Columbus, OH 43215	8150230010651572 8150200071039405	Internet	\$3,095.40	\$128.98
Verizon Wireless	140 West St, New York, NY 10007	955-972-506-0001-37	Backup Internet	\$1,363.92	\$56.83
Eighty8Networks	12 State Rt 17 N, Ste 120, Paramus, NJ 07652	4015	Telecom & Internet	\$33,372.48	\$1,390.52