

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

In re:	)	
	)	Chapter 11
CLOVER TECHNOLOGIES GROUP, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 19-12680 (____)
Debtors.	)	
	)	(Joint Administration Requested)

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

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and together with their non-debtor affiliates, the “Company”) respectfully state as follows in support of this motion:<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (respectively, the “Interim Order” and “Final Order”) (a) determining adequate assurance of payment for future utility services, (b) prohibiting utility providers from altering, refusing, or discontinuing services, and (c) approving the Debtors’

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors’ service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Andrew Buck, Chief Financial Officer of Clover Wireless, LLC in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously with the Debtors’ voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on December 16, 2019 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration or in the Plan, as applicable.

proposed procedures for resolving Adequate Assurance Requests (as defined herein). In addition, the Debtors request that the Court schedule a final hearing within approximately 21 days of the commencement of these chapter 11 cases approval of this motion on a final basis.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has 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. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and 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”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363, and 366 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 6007, and Local Rules 2002-1 and 9013-1.

### **Background**

5. The Debtors collect and recycle electronic devices and provide aftermarket management services for mobile device carriers, manufacturers, retailers, insurance providers and enterprise businesses. Formed through organic growth and strategic acquisitions, the Debtors and their non-debtor affiliates operate repair centers in North America and abroad and provide services in over 120 countries. The Company’s comprehensive services portfolio includes a full suite of

returns management, customized trade-in and buyback programs, and device re-marketing through multiple sales channels, and their repair and reclamation services restore devices to high-quality condition while avoiding waste and maximizing value for their customers.

6. Prior to the Petition Date, the Debtors engaged in extensive discussions with the Consenting Stakeholders. These extensive, good faith, arm's-length discussions culminated in the execution of the Restructuring Support Agreement, which serves as the foundation for the Plan and has the support of the vast majority of the Debtors' funded debt holders. The Plan provides for a comprehensive restructuring of the Debtors' prepetition funded debt obligations, leaves General Unsecured Claims unimpaired, preserves the going-concern value of the Debtors' business, maximizes creditor recoveries, and protects the jobs of the Company's invaluable employees. The transactions contemplated by the Restructuring Support Agreement and Plan will enable the Debtors to substantially deleverage their balance sheet and position their business for stability and success after emergence from chapter 11.

7. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **The Utility Services**

8. In connection with the operation of their business in the United States, the Debtors obtain electricity, natural gas, telecommunications, water, waste management (including sewer and trash), internet, and other similar services (collectively, the "Utility Services") from a number

of utility providers or brokers (the “Utility Providers”) to facilitate their business operations. A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors’ various locations and their business operations as of the Petition Date (the “Utility Services List”) is attached hereto as **Exhibit C**.<sup>3</sup>

9. Uninterrupted Utility Services are essential to the Debtors’ ongoing business operations and, hence, the overall success of these chapter 11 cases. The Utility Services are essential for the Debtors to maintain their business and to operate corporate offices across multiple states throughout the United States to provide functions essential for daily operations. These offices requires electricity, telecommunications, internet, and other Utility Services in order to operate. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted, and such disruption would jeopardize the Debtors’ ability to successfully operate and manage their reorganization efforts.

10. Debtors Clover Technologies Group, LLC and Valu Tech Outsourcing, LLC pay for all Utility Services received by all the Debtors and non-debtor affiliates, and both subsequently pay the applicable Utility Provider directly through their accounts payable departments.

11. For some of the Debtors’ locations, certain Utility Services are billed directly to the Debtors’ landlords and passed through to the Debtors as part of the Debtors’ lease payments in accordance with the applicable lease agreements. The relief requested herein is with respect to all Utility Providers supplying Utility Services to the Debtors, including those that indirectly supply services through the applicable landlords.

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<sup>3</sup> Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted one of more Utility Providers. By this Motion, the Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Provider is specifically identified on **Exhibit C**.

12. To the best of the Debtors' knowledge, there are no defaults or arrearages with respect to the undisputed invoices for prepetition Utility Services. In the aggregate, the Debtors pay approximately \$15,000.00 each month for Utility Services, calculated as a historical average payment for the twelve-month period ending October 31, 2019, or based on the highest month's bill during the same period when a full twelve-month period is unavailable. Accordingly, the Debtors estimate that their cost for third-party Utility Services during the next 21 days (not including any deposits to be paid or any unpaid prepetition amount that has already been invoiced) will be approximately \$10,500.00. Additionally, the Debtors have provided certain of the Utility Providers with cash deposits as set forth in the Utility Services List (collectively, the "Prepetition Deposits").

**I. Proposed Adequate Assurance and Adequate Assurance Procedures.**

13. The Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner. Moreover, the Plan provides for the payment in full in cash of all general unsecured creditors, including Utility Providers. Further, the Debtors have filed the *Motion for an Order Authorizing the Payment of Certain Prepetition Claims in the Ordinary Course of Business* (the "All Claims Motion") contemporaneously herewith, seeking to pay all general unsecured creditors in full in the ordinary course. Cash held by the Debtors, cash generated in the ordinary course of business, and cash available to the Debtors will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice.

14. To provide additional assurance of payment, the Debtors propose to deposit \$6,465.19 into a segregated account (the "Adequate Assurance Deposit"), which represents an amount equal to approximately one-half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average utility expenses over the twelve months ending October 31, 2019, or based on the highest month's bill during the same period when a full twelve-

month period is unavailable, excluding any prepaid amounts or Prepetition Deposits held by the Utility Providers.

15. The Adequate Assurance Deposit will be held in a segregated account at PNC Financial Services Group, Inc. for the benefit of the Utility Providers (the “Adequate Assurance Account”) for the duration of these chapter 11 cases, subject to the Debtors’ right to terminate or discontinue the applicable Utility Services, and may be applied to any postpetition defaults in payment to the applicable Utility Providers. The Debtors will hold the Adequate Assurance Deposit, and no liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

16. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future Utility Services in accordance with their prepetition practice, and the Prepetition Deposits currently held by certain of the Utility Providers (collectively, the “Proposed Adequate Assurance”) constitutes sufficient adequate assurance to the Utility Providers in satisfaction of section 366 of the Bankruptcy Code.

## **II. The Adequate Assurance Procedures.**

17. The Debtors propose that the Court require any Utility Provider that is not satisfied with the Proposed Adequate Assurance could make a request for adequate assurance of future payment (each, an “Adequate Assurance Request”) pursuant to the adequate assurance procedures set forth in the proposed order (the “Adequate Assurance Procedures”):

- a. The Debtors will serve a copy of the Motion and the Interim and Final Orders granting the relief requested herein to each Utility Provider identified on **Exhibit C** within two (2) business days after entry of the applicable order by the Court.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account as soon as reasonably practicable after entry of the applicable order by the Court.

- c. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for each such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Providers List.
- d. If an amount relating to Utility Services provided postpetition by any 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, Clover Technologies Group, LLC, 5850 Granite Parkway, Suite 720, Plano, Texas 75024, Attn: Richard X. Fischer; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C.; Matthew C. Fagen; Francis Petrie; and Gary Kavarsky; (iii) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti and Michael W. Yurkewicz, and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn: Morton R. Branzburg; (iv) counsel to the Ad Hoc Term Loan Lender Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Scott J. Greenberg, Michael J. Cohen, Steven A. Domanowski, and Matthew P. Porcelli and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones; (v) Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; and (vi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall honor such request within five (5) business 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 any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties.
- f. Any Additional Assurance Request must: (i) be in writing, (ii) identify the location for which the Utility Services are provided, (iii) summarize the Debtors’ payment history relevant to the affected account(s), (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending October 31, 2019, or based on the highest month’s bill during the same period when a full twelve-month period is unavailable, (v) certify that the Utility Provider does not already

hold a deposit equal to or greater than one-half the monthly cost of the Utility Services, (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider, and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- g. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from 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.
- h. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall have twenty-one (21) days from the receipt of the Additional Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request.
- i. The Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable, subject to the terms of any collateral/financing orders entered by the Court.
- j. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.
- l. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of the Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the



Debtors provide notice to any Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors shall serve a copy of the Motion and related orders on each Utility Provider listed on the Utility Services List within two (2) business days after the date such order is entered.

18. The Adequate Assurance Procedures provide 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 applicable Utility Provider and without further order of the Court. If the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request.

### **III. Modifications to the Utility Services List.**

19. To the extent the Debtors identify new or additional Utility Providers or discontinue services from existing Utility Providers, the Debtors seek authority to add or remove parties from the Utility Services List. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors will serve such Utility Provider with a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures. The Debtors request that the terms of such Utility Services order and the Adequate Assurance Procedures apply to any subsequently identified Utility Provider. For any Utility Provider that is subsequently removed from the Utility Services List, the Debtors request the authority to decrease the Adequate Assurance Deposit by an amount equal to two weeks of the Debtors' average cost of services from each removed Utility Provider.

### **Basis for Relief**

20. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

21. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

22. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court's inherent equitable powers 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). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

23. 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 provider within thirty days of the petition, or the utility provider 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

for what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtors’ 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) (“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.*, 117 F.3d 646 (2d Cir. 1997).

24. When considering whether a given assurance of payment is “adequate,” the courts 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. Sols., 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 marks 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”). Accordingly, demands by a Utility

Provider for a guarantee of payment should be refused when the Debtors' specific circumstances already afford adequate assurance of payment.

25. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit, and the Debtors' ongoing ability to meet obligations as they come due in the ordinary course, provides ample assurance of the Debtors' payment of their future obligations. Moreover, termination of the Utility Services could result in the Debtors' inability to operate their businesses to the detriment of all stakeholders. *See 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").

26. 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 "the 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.* Here, notwithstanding this Court's determination that the Debtors' 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 fully preserved under the Adequate Assurance Procedures. *See id.* at \*5–6. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at \*6. The Adequate Assurance Procedures, however, avoid a

haphazard and chaotic process whereby each Utility Provider could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at \*5.

27. The Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and thus the Debtors respectfully request that the Court grant the relief requested herein. Indeed, similar procedures have been approved by courts in this district. *See, e.g., In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (approving adequate assurance deposit equal to one-half of debtor's monthly utility expenses on an interim basis); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (approving adequate assurance deposit equal to one-half of debtor's monthly utility expenses on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same); *In re Blackhawk Mining, LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same).<sup>4</sup>

28. 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." The Adequate Assurance Procedures and the Proposed Adequate Assurance 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 both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

29. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any 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 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.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

30. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Reservation of Rights**

31. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. 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' rights to subsequently dispute such claim.

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

32. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Notice**

33. The Debtors have provided notice of this motion to the following parties or their respective counsel: (a) the office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the Term Loan Agent; (d) counsel to the Ad Hoc Term Loan Lender Group; (e) the office of the attorneys general for the states in which the Debtors operate; (f) the United States Attorney's Office for the District



of Delaware; (g) the Internal Revenue Service; (h) the Utility Providers; and (i) 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 submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

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

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter Interim and Final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 17, 2019  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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Domenic E. Pacitti (DE Bar No. 3989)  
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*Proposed Co-Counsel for the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

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

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In re:	)	
	)	Chapter 11
	)	
CLOVER TECHNOLOGIES GROUP, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-12680 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ____</b>

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

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) determining adequate assurance of payment for future utility services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving Adequate Assurance Requests, and (d) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and that 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 venue of this

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors’ service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

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

proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate 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 (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 in this Interim Order.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2020.
3. The Adequate Assurance Deposit, the deposits paid by the Debtors before the Petition Date that are currently held by certain of the Utility Providers, and the Debtors' ability to pay for future Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures shall constitute adequate assurance of future payment as required under section 366 of the Bankruptcy Code.
4. The following Adequate Assurance Procedures are hereby approved on an interim basis:
  - a. The Debtors will serve a copy of the Motion and this Interim Order granting the relief requested herein to each Utility Provider identified on Exhibit C of the Motion within two (2) business days after entry of the order by the Court.

- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account as soon as reasonably practicable after entry of this Interim Order.
- c. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for each such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Providers List.
- d. If an amount relating to Utility Services provided postpetition by any 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, Clover Technologies Group, LLC, 5850 Granite Parkway, Suite 720, Plano, Texas 75024, Attn: Richard X. Fischer; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C.; Matthew C. Fagen; Francis Petrie; and Gary Kavarsky; (iii) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti and Michael W. Yurkewicz, and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn: Morton R. Branzburg; (iv) counsel to the Ad Hoc Term Loan Lender Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Scott J. Greenberg, Michael J. Cohen, Steven A. Domanowski, and Matthew P. Porcelli and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones; (v) Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; and (vi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall honor such request within five (5) business 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 any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties.
- f. Any Additional Assurance Request must: (i) be in writing, (ii) identify the location for which the Utility Services are provided, (iii) summarize the Debtors’ payment history relevant to the affected account(s), (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the

applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending October 31, 2019, or based on the highest month's bill during the same period when a full twelve-month period is unavailable, (v) certify that the Utility Provider does not already hold a deposit equal to or greater than one-half the monthly cost of the Utility Services, (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider, and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- g. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from 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.
- h. Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall have twenty-one (21) days from the receipt of the Additional Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Additional Assurance Request.
- i. The Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable, subject to the terms of any collateral/financing orders entered by the Court.
- j. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, will request a hearing (a "Determination Hearing") before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.
- l. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of the Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion

thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the Debtors provide notice to any Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors shall serve a copy of the Motion and this Interim Order on each Utility Provider listed on the Utility Services List within two (2) business days after the date this Interim Order is entered.

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

6. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.

7. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized to add or remove such parties from the Utility Services List; provided, however, that the Debtors shall provide notice of any such addition or removal to the Notice Parties. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider, such Utility Provider shall not be removed from the Utility Services List, and no funds shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors shall serve such Utility Provider a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Services List. The terms of this order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider.



9. Any landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults with respect to the applicable lease; *provided* that a landlord may cease payments on account of Utility Services following the effective date of the rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code, if any.

10. Pursuant to the Adequate Protection Procedures, upon the Debtors' termination of Utility Services, the Debtors may, in their discretion and without further order of this Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider.

11. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order or the Motion shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the 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.

12. Notwithstanding the relief granted in this Interim Order, any payment made (or to be made) by the Debtors pursuant to the authority granted herein shall be subject to the terms, conditions, limitations, and requirements of any applicable order governing the Debtors' use of cash collateral and any budget in connection therewith.

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 Interim Order.

14. The Debtors are authorized 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.

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

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

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

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim 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 Interim Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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United States Bankruptcy Judge

**Exhibit B**

**Proposed Final Order**

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

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In re:	)	
	)	Chapter 11
	)	
CLOVER TECHNOLOGIES GROUP, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-12680 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ____</b>

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

---

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) determining adequate assurance of payment for future utility services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, and (c) approving the Debtors’ proposed procedures for resolving Adequate Assurance Requests, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors’ service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

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

of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate 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 (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 Adequate Assurance Deposit, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
3. The following Adequate Assurance Procedures are hereby approved on a final basis:
  - a. The Debtors will serve a copy of the Motion and this Final Order granting the relief requested herein to each Utility Provider identified on Exhibit C of the Motion within two (2) business days after entry of the order by the Court.
  - b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account as soon as reasonably practicable after entry of this Final Order.
  - c. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for each such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Providers List.

- d. If an amount relating to Utility Services provided postpetition by any 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, Clover Technologies Group, LLC, 5850 Granite Parkway, Suite 720, Plano, Texas 75024, Attn: Richard X. Fischer; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C.; Matthew C. Fagen; Francis Petrie; and Gary Kavarsky; (iii) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti and Michael W. Yurkewicz, and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn: Morton R. Branzburg; (iv) counsel to the Ad Hoc Term Loan Lender Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Scott J. Greenberg, Michael J. Cohen, Steven A. Domanowski, and Matthew P. Porcelli and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones; (v) Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; and (vi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors shall honor such request within five (5) business 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 any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties.
- f. Any Additional Assurance Request must: (i) be in writing, (ii) identify the location for which the Utility Services are provided, (iii) summarize the Debtors’ payment history relevant to the affected account(s), (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending October 31, 2019, or based on the highest month’s bill during the same period when a full twelve-month period is unavailable, (v) certify that the Utility Provider does not already hold a deposit equal to or greater than one-half the monthly cost of the Utility Services, (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider, and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- g. If a Utility Provider fails to file and serve an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from 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.
- h. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall have twenty-one (21) days from the receipt of the Additional Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request.
- i. The Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable, subject to the terms of any collateral/financing orders entered by the Court.
- j. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.
- l. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of the Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the Debtors provide notice to any Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors shall serve a copy of the Motion and this Final Order on each Utility Provider listed on the Utility Services List within two (2) business days after the date this Final Order is entered.



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

5. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.

6. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

7. The Debtors are authorized to add or remove such parties from the Utility Services List; provided, however, that the Debtors shall provide notice of any such addition or removal to the Notice Parties. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider, such Utility Provider shall not be removed from the Utility Services List, and no funds shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors shall serve such Utility Provider a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Services List. The terms of this order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider.

8. Any landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of

rent, or any defaults with respect to the applicable lease; *provided* that a landlord may cease payments on account of Utility Services following the effective date of the rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code, if any.

9. Pursuant to the Adequate Protection Procedures, upon the Debtors' termination of Utility Services, the Debtors may, in their discretion and without further order of this Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider.

10. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or the Motion shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the 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.

11. Notwithstanding the relief granted in this Final Order, any payment made (or to be made) by the Debtors pursuant to the authority granted herein shall be subject to the terms,

conditions, limitations, and requirements of any applicable order governing the Debtors' use of cash collateral and any budget in connection therewith.

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

13. The Debtors are authorized 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.

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

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

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

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

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit C**

**Utility Services List**

Utility Provider	Service Address	Service Provided	Account Number	Prepetition Deposits	Proposed Adequate Assurance
AT&T P.O. Box 5019 Carol Stream, IL 60197-5019	1778 Carr Road Calexico, CA 92231	Telecommunication	831-000-9068 531 831-000-9068 534		\$450.00
AT&T P.O. Box 5019 Carol Stream, IL 60197-5019	5850 Granite Parkway Plano, TX 75024	Telecommunication	831-000-9068 531 831-000-9435 457		\$591.51
AT&T Mobility PO Box 6463 Carol Stream, IL 60197-6463	313 Armour Road North Kansas City, MO 64116	Telecommunication	831-000-9068 531 831-000-9068 535		\$428.25
AT&T P.O. Box 5019 Carol Stream, IL 60197-5019	122 W. Madison Street Ottawa, IL 61350	Telecommunication	831-000-9068 531 831-000-9285 161		\$474.23
AT&T P.O. Box 5019 Carol Stream, IL 60197-5019	4055 Corporate Drive Grapevine, TX 76051	Telecommunication	831-000-9068 531 831-000-9068 532		\$504.92
AT&T P.O. Box 5019 Carol Stream, IL 60197-5019	5850 Granite Parkway Plano, TX 75024	Telecommunication	831-000-5477 412		\$615.90
Burrtec Waste Group Pmt Proc Center Buena Park, CA 90622-5938	458 E. Commercial Road San Bernardino, CA 92408	Waste Management	57-AC 201675- 4315045412		\$69.07
Conservice PO Box 4718 Logan, UT 84323-4718	448 W. Market Street San Diego, CA 92101	Water & Sewage	20574508		\$7.85
Cox Business Department # 102288 Oaks, PA 19456	448 W. Market Street San Diego, CA 92101	Telecommunication	001 3110 109562402		\$146.98
Frontier PO Box 740407 Cincinnati, OH 45274-0407	458 E. Commercial Road San Bernardino, CA 92408	Telecommunication	909-799-7157-110118- 5		\$289.08
Imperial Irrigation District PO Box 937 Imperial, CA 92251-0937	1778 Carr Road Calexico, CA 92231	Electric	50775030	\$1,500.00	\$0

Utility Provider	Service Address	Service Provided	Account Number	Prepetition Deposits	Proposed Adequate Assurance
KC Fiber LLC 201 E. 16th Avenue North Kansas City, MO 64116	313 Armour Road North Kansas City, MO 64116	Internet	N/A		\$149.98
Mediacom Telephony of Illinois PO Box 5744 Carol Stream, IL 60197	122 W. Madison Street Ottawa, IL 61350-5006	Telecommunication	8384 97 500 0024036		\$482.86
Republic Services #467 PO Box 78829 Phoenix, AZ 85062-8829	1778 Carr Road Calexico, CA 92231	Waste Management	3-0467-0034604		\$126.57
Republic Services #794 PO Box 78829 Phoenix, AZ 85062-8829	4055 Corporate Drive Grapevine, TX 76051	Waste Management	3-0794-0118908		\$90.80
San Bernardino Municipal Water Dept. PO Box 710 San Bernardino, CA 92402	458 Commercial Road San Bernardino, CA 92408	Water & Sewage	301913-97102	\$500.00	\$0
SDGE (Sempra Energy) San Diego Gas & Electric PO Box 25111 Sana Ana, CA 92799-5111	448 W. Market Street San Diego, CA 92101	Gas & Electric	7353 477 252 3		\$32.36
Southern California Edison PO Box 300 Rosemead, CA 91771-0001	458 Commercial Road San Bernardino, CA 92408	Gas & Electric	2-41-310-6642 3-048-9834-45	\$1,605.00	\$0
Time Warner Cable PO Box 223085 Pittsburgh, PA 15251	4055 Corporate Drive Grapevine, TX 76051	Telecommunication	096610801		\$1,370.73
W-PNP Inc. PO Box 2792 Calexico, CA 92232	1778 Carr Road Calexico, CA 92231	Telecommunication	92231-0163		\$634.10
			<b>TOTAL</b>	<b>\$3,605.00</b>	<b>\$6,465.19</b>