

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
THQ INC., *et al.*, : Case No. 12-13398 (MFW)
: :
Debtors.¹ : Jointly Administered
: :
: RE: Docket Nos. 6 and 47
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FINAL ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES TO, OR DISCRIMINATING AGAINST, THE DEBTORS ON ACCOUNT OF PREPETITION INVOICES; (B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE PERFORMANCE; AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT

Upon the Motion² of THQ Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), for entry of interim and final orders (a) prohibiting the Utility Providers (defined below) from (i) altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition, (ii) requiring additional adequate assurance of payment as a condition to providing utility service or (iii) drawing upon any existing security deposit, surety bond or other form of security to secure future payment for utility services; (b) determining that adequate assurance of payment for postpetition utility services has been furnished to the Utility Providers providing services to the Debtors; and (c) establishing procedures for resolving requests by any Utility Provider for additional adequate assurance of payment; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.



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consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the 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 the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted to the extent set forth herein on a final basis.
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. The Debtors shall provide an Adequate Assurance Deposit for all Utility Providers by depositing \$69,343.55, equal to approximately fifty percent (50%) of the Debtors' estimated monthly cost of the Utility Services (the "**Adequate Assurance Deposit**"), into one segregated bank account designed for the Adequate Assurance Deposit (the "**Adequate Assurance Deposit Account**") within 20 days of the Petition Date.
4. The Adequate Assurance Deposit, in conjunction with the Debtor's ability

to pay for future utility services in the ordinary course of business (collectively, the “**Proposed Adequate Assurance**”), constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code.

5. The Utility Providers are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges; or (b) requiring additional adequate assurance of payment other than the Proposed Adequate Assurance as a condition of the Debtors receiving such Utility Services.

6. The following Adequate Assurance Procedures are approved:

a. Within three business days after the date the Final Order is docketed, the Debtors will mail a copy of the Final Order to the Utility Providers on the Utility Providers List;

b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon the following parties: (i) THQ Inc., 29903 Agoura Hills Road, Agoura Hills, CA 91301 (Attn: Ed Kaufman); and (ii) proposed counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071 (Attn: Jeffrey C. Krause, Esq.) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Jaime Luton Chapman, Esq.) (collectively, the “**Notice Parties**”);

c. Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which utility services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the objecting Utility Provider; (v) explain whether the Debtors prepay for the Utility Provider’s services or what payment terms presently apply to the Debtors; (vi) explain why the objecting Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; (vii) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code;

d. Upon the Notice Parties’ receipt of an Additional Assurance Request at the address set forth in subparagraph (b) above, the Debtors shall have the

greater of (i) 14 days from the receipt of such Additional Assurance Request, (ii) 20 days from the Petition Date, or (iii) such other period as agreed between the Debtors and the applicable Utility Provider (collectively, the “**Resolution Period**”) to negotiate with such Utility Provider to resolve such Provider’s Additional Assurance Request;

e. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest and may, in connection with any such agreement and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, and/or other forms of security, without further order of the Court to the extent the Debtors believe such additional assurance is reasonable in the exercise of their business judgment;

f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors will file a motion with the Court to request a hearing before the Court within a reasonable time after the receipt of the Additional Assurance Request to determine the adequacy of assurance of payment with respect to a particular Utility Provider (the “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code;³

g. Pending resolution of any such Determination Motion, any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance; and

h. The Debtors may, in their discretion, resolve any Determination Motion 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 and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, and/or other forms of security, without further order of the Court to the extent 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 Adequate Assurance Deposit by an amount not exceeding the objecting Utility Provider’s estimated two-week utility expense.

7. The Debtors may supplement the Utility Providers List without further order of the Court if any Utility Provider has been inadvertently omitted from the Utility Providers List (the “**Additional Utility Provider**”); and the Debtors will as soon as

³ Section 366(c)(3)(A) of the Bankruptcy Code provides that “[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment” 11 U.S.C. § 366(c)(3)(A).

practicable file with the Court a supplement to **Exhibit C** adding the name of any Additional Utility Provider to the Utility Providers List (the “**Supplement**”). The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of a Utility Provider, by First Class Mail) a copy of the Motion and this signed Order on any Additional Utility Provider.

8. Any Additional Utility Provider is subject to the terms of this Order. Any Additional Utility Provider shall have 30 days from the date of service of the Motion and this Order to make an Additional Assurance Request as outlined above. Should any Additional Utility Provider be added to the Utility Providers List, the Debtors will not be required to increase the amounts of deposit in the Adequate Assurance Deposit Account.

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

10. Upon confirmation of any plan of reorganization of these chapter 11 cases, and without further order of the Court, all amounts in the Adequate Assurance Deposit Account shall be immediately available for the Debtors’ use, in their sole discretion.

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

12. Nothing contained 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 the Utility Providers List.

13. Within three business days of the date of this Order, the Debtors shall serve a copy of this Order and the Motion on each Utility Provider identified on the Utility Providers List, and that within three business days of filing the Supplement, the Debtors shall serve a copy of this Order and the Motion on any Additional Utility Provider.

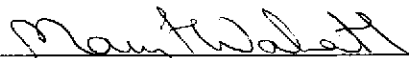
14. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

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

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

Dated: Wilmington, Delaware
January 4, 2013



Mary F. Walrath
United States Bankruptcy Judge