

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

In re:)	
)	Chapter 11
)	
ASCEND PERFORMANCE MATERIALS)	Case No. 25-90127 (CML)
HOLDINGS INC., <i>et al.</i> , ¹)	
)	
Debtors.)	(Jointly Administered)
)	

**CERTIFICATE OF NO OBJECTION WITH RESPECT
TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE (A) EMPLOYMENT AND RETENTION OF
FTI CONSULTING, INC. AS RESTRUCTURING ADVISOR TO THE
DEBTORS, (B) DESIGNATION OF ROBERT DEL GENIO AS CHIEF
RESTRUCTURING OFFICER TO THE DEBTORS AND DAVID RUSH
AS ASSOCIATE CHIEF RESTRUCTURING OFFICER TO THE DEBTORS,
AND (C) PROVISION OF ADDITIONAL PERSONNEL FOR THE DEBTORS,
EACH EFFECTIVE AS OF APRIL 21, 2025, AND (II) GRANTING RELATED RELIEF**

[Relates to Docket Nos. 336 and 337]

Pursuant to the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Rules"), the undersigned counsel for the above-captioned debtors and debtors in possession (collectively, the "Debtors") certifies as follows:

1. On May 21, 2025, the Debtors filed the *Debtors' Application for Entry of an Order (I) Authorizing the (A) Employment and Retention of FTI Consulting, Inc. as Restructuring Advisor to the Debtors, (B) Designation of Robert Del Genio as Chief Restructuring Officer to the Debtors and David Rush as Associate Chief Restructuring Officer to the Debtors, and (C) Provision Of Additional Personnel for the Debtors, Each Effective as of April 21, 2025, and*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.'s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

(II) *Granting Related Relief* [Docket No. 336] (the “FTI Retention Application”), seeking entry of a proposed order in the form attached thereto (the “Proposed Order”).

2. The deadline to file objections and responses to entry of the Proposed Order was June 11, 2025, at 4:00 p.m., (prevailing Central Time). The Debtors received informal comments from United States Trustee for the Southern District of Texas, which are incorporated in the revised Proposed Order attached hereto (the “Revised Proposed Order”).

3. Pursuant to paragraph 44 of the Complex Rules, the undersigned represents to the United States Bankruptcy Court for the Southern District of Texas (the “Court”) that the Debtors are unaware of any objection to approval of the FTI Retention Application and that counsel has reviewed the Court’s docket, and that no objection or response appears thereon.

4. A redline of the Revised Proposed Order against the Proposed Order is attached hereto as **Exhibit A**.

5. The Debtors therefore request that the Court enter the Revised Proposed Order.

[Remainder of page intentionally left blank]

Houston, Texas
Dated: June 11, 2025

/s/ Jason G. Cohen

BRACEWELL LLP

Jason G. Cohen (TX Bar No. 24050435)
Jonathan L. Lozano (TX Bar No. 24121570)
711 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 223-2300
Facsimile: (800) 404-3970
Email: jason.cohen@bracewell.com
jonathan.lozano@bracewell.com

*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

KIRKLAND & ELLIS LLP

**KIRKLAND & ELLIS INTERNATIONAL
LLP**

Christopher Marcus, P.C. (admitted *pro hac vice*)
Derek I. Hunter (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: cmarcus@kirkland.com
derek.hunter@kirkland.com

*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on June 11, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

Exhibit A

Redline

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

<p>In re:</p> <p>ASCEND PERFORMANCE MATERIALS HOLDINGS INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 25-90127 (CML)</p> <p>(Jointly Administered)</p>
---	--	--

**ORDER (I) AUTHORIZING THE (A) EMPLOYMENT AND
RETENTION OF FTI CONSULTING, INC. AS RESTRUCTURING
ADVISOR TO THE DEBTORS, (B) DESIGNATION OF ROBERT
DEL GENIO AS CHIEF RESTRUCTURING AND DAVID RUSH AS
ASSOCIATE CHIEF RESTRUCTURING OFFICER TO THE DEBTORS,
AND (C) PROVISION OF ADDITIONAL PERSONNEL FOR THE DEBTORS,
EACH EFFECTIVE AS OF APRIL 21, 2025, AND (II) GRANTING RELATED RELIEF**

Upon the Application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) request entry of an order (this “Order”): (a) authorizing the (i) employment and retention of FTI Consulting, Inc. (“FTI”) as restructuring advisor to the Debtors, (ii) designation of Robert Del Genio as Chief Restructuring Officer (“CRO”) and David Rush as Associate Chief Restructuring Officer (“Associate CRO”) of each of the Debtors, and (iii) the provision of additional personnel to the Debtors (collectively, the “Engagement Personnel,” and together with the CRO and the Associate CRO, the “FTI Professionals”), each effective as of April 21, 2025 (the “Petition Date”) and pursuant to the terms and conditions set forth in that certain engagement letter (and the attachments and schedules thereto) between FTI

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.’s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

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

and the Debtors, dated March 6, 2025 (the “Engagement Letter”), a copy of which is attached as **Exhibit 1** to this Order; and (b) granting related relief, all as more fully set forth in the Application; 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 *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas, entered May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application 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 Application 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 Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”), if any; and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing, if any, 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. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Bankruptcy Local Rules 2014-1 and 2016-1, and the Complex Case Procedures, the Debtors are authorized to (a) employ and retain FTI [as restructuring advisors to the Debtors](#), (b) designate Robert Del Genio as the CRO of the Debtors and David Rush as the Associate CRO of the Debtors, and (c) provide additional Engagement Personnel for the Debtors, each

effective as of the Petition Date, in accordance with the terms and conditions set forth in the Application, [the Del Genio Declaration](#), and Engagement Letter, as modified by this Order.

2. The terms of the Engagement Letter, including, without limitation, the compensation provisions and the indemnification provisions, as modified by this Order, are reasonable terms and conditions of employment and are hereby approved as set forth herein; *provided, however*, that for the avoidance of doubt, nothing in this Order shall constitute any findings regarding, or the approval or any determination with respect to, the reasonableness of any Performance Fee.

3. Upon employment and retention by the Debtors, Mr. Del Genio shall be empowered and authorized to carry out all duties and responsibilities set forth in the Engagement Letter.

4. Notwithstanding anything in the Application, the Engagement Letter, the Del Genio Declaration, or any exhibit(s) related to the contrary:

- (a) FTI and its affiliates shall not act in any other capacity in connection with the above-captioned chapter 11 cases.
- (b) In the event the Debtors seek to have the FTI Professionals assume executive officer positions that are different than the position(s) disclosed in the Engagement Letter, or to materially change the terms of the engagement by either (i) materially modifying the functions of personnel, or (ii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed with the Court.
- (c) During the course of these chapter 11 cases, FTI will only seek reimbursement of actual and necessary expenses.
- (d) No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of these chapter 11 cases.
- (e) Any success fees, transaction fees, or other back-end fees shall be subject to approval by the Court at the conclusion of this case in conjunction with FTI's final fee application on a reasonableness standard and are not being pre-approved by entry of this Order. The rights of the U.S. Trustee, the Official Committee of

Unsecured Creditors appointed in these chapter 11 cases, and all other parties in interest to object to any such fees, including the Performance Fee, on any grounds, are fully preserved.

- (f) The Debtors are permitted to indemnify those persons serving as corporate officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' directors and officers insurance policy, except to the extent a claim or expense is judicially determined to have arisen from gross negligence, willful misconduct, bad faith, fraud, or self-dealing.
- (g) There shall be no indemnification of FTI or its affiliates, except as may be provided for in this Order.
- (h) For a period of three years after the conclusion of the engagement, neither FTI nor any of its affiliates shall make any investments in the Debtors or the reorganized Debtors.
- (i) The FTI Professionals serving as corporate officers of the Debtors shall be subject to the same fiduciary duties and obligations applicable to other persons serving in such capacity.

5. FTI is authorized to apply the Cash on Account and/or advanced payments to satisfy any unbilled or other remaining prepetition fees and expenses that FTI becomes aware of during its ordinary course billing review and reconciliation. Any remaining Cash on Account and/or advanced payments shall be held by FTI and applied against any amounts owed by the Debtors and approved by the Court in FTI's final fee application. After payment of FTI's fees approved in its final fee application, FTI shall remit any remaining funds in the Cash on Account to the Debtors or as otherwise directed by the Court.

6. FTI shall prepare and serve monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable orders and procedures

of this Court. For billing purposes, the FTI Professionals providing services on an hourly rate basis shall keep their time in one tenth (1/10) hour increments.

7. In the event that, during the pendency of these chapter 11 cases, FTI seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in FTI's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules and subject to approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code; *provided, however,* that FTI shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of FTI's fee applications in these chapter 11 cases.

8. To the extent further increases in rates set forth in the Application occur after entry of this Order, FTI shall file a notice with the Court and give the Debtors, the U.S. Trustee, and counsel to the Committee notice of any increases in the rates set forth in the Application. The notice shall explain the basis for the requested rate increases in accordance with Bankruptcy Code section 330(a)(3)(F) and state whether the Debtors have consented to the rate increase. The U.S. Trustee retains all rights to object to any hourly rate increases on all grounds, including the reasonableness standard set forth in Bankruptcy Code section 330, and the Court may review any rate increase pursuant to Bankruptcy Code section 330.

9. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Del Genio Declaration and this Order, the terms of this Order shall govern.

10. The ~~Engagement Letter's~~ Indemnification Provisions ~~are approved only for the Hourly Temporary Staff and~~ set forth in the Engagement Letter are subject to the following during the pendency of these chapter 11 cases:

- (a) Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtors, the Debtors are authorized to indemnify, and shall indemnify, FTI for any claims arising from, related to, or in connection with the services to be provided by FTI as specified in the Application, but not for any claim arising from, related to, or in connection with FTI's performance of any other services other than those in connection with the engagement, unless such services and indemnification therefor are approved by this Court; and
- (b) The Debtors shall not have any obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, unless the Court determines that indemnification would be permissible pursuant to applicable law, or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, but determined by this Court, after notice and a hearing, to be a claim or expense for which FTI is not entitled to receive indemnity; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtors' chapter 11 cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the chapter 11 cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

11. Notwithstanding anything in the Application or the Engagement Letter to the contrary, to the extent that FTI uses the services of independent, third party, or non-affiliated contractors or subcontractors (the "Contractors") in the Chapter 11 Cases, FTI shall (a) pass-through the cost of such Contractors to the Debtors at the same rate that FTI pays the Contractors, (b) with respect to costs incurred by the Contractors, seek reimbursement for actual, reasonable and documented costs only, (c) ensure that the Contractors are subject to the same

conflict checks as were required for FTI in accordance with this retention; and (d) file or cause to be filed with the Court any disclosures required by Bankruptcy Rule 2014.

12. To the extent the Debtors wish to materially expand the scope of FTI's services beyond those services set forth in the Engagement Letters, the Del Genio Declaration, or this Order, the Debtors shall be required to seek further approval from this Court. The Debtors shall file notice of any proposed additional services (the "Proposed Additional Services") and any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, any official committee appointed in these chapter 11 cases, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within fourteen (14) days of the Debtors filing such notice, the Proposed Additional Services and any underlying engagement agreement may be approved by the Court by further order without further notice or hearing. To the extent any such party objects within fourteen (14) days of notice of such Proposed Additional Services being served, the Debtors will promptly schedule a hearing before the Court on such matter. The Proposed Additional Services will not be effective unless and until they are approved by the Court. All additional services shall be subject to the provisions of this Order.

13. Notwithstanding anything to the contrary in the Engagement Letters, the Limit of Liability provision found in § 6.3 of FTI's Standard Terms and Conditions does not apply to nor is it effective against the Debtors during the pendency of these chapter 11 cases.

14. ~~11.~~ Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of the applicable Bankruptcy Rules.

15. ~~12.~~ Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

16. ~~13.~~ The Debtors and FTI are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

Houston, Texas

Dated: _____, 2025

	THE HONORABLE CHRISTOPHER M. LOPEZ UNITED STATES BANKRUPTCY JUDGE
--	--

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

In re:)	
)	Chapter 11
ASCEND PERFORMANCE MATERIALS)	
HOLDINGS INC., <i>et al.</i> , ¹)	Case No. 25-90127 (CML)
)	
Debtors.)	(Jointly Administered)

**ORDER (I) AUTHORIZING THE (A) EMPLOYMENT AND
RETENTION OF FTI CONSULTING, INC. AS RESTRUCTURING
ADVISOR TO THE DEBTORS, (B) DESIGNATION OF ROBERT
DEL GENIO AS CHIEF RESTRUCTURING AND DAVID RUSH AS
ASSOCIATE CHIEF RESTRUCTURING OFFICER TO THE DEBTORS,
AND (C) PROVISION OF ADDITIONAL PERSONNEL FOR THE DEBTORS,
EACH EFFECTIVE AS OF APRIL 21, 2025, AND (II) GRANTING RELATED RELIEF**

Upon the Application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) request entry of an order (this “Order”): (a) authorizing the (i) employment and retention of FTI Consulting, Inc. (“FTI”) as restructuring advisor to the Debtors, (ii) designation of Robert Del Genio as Chief Restructuring Officer (“CRO”) and David Rush as Associate Chief Restructuring Officer (“Associate CRO”) of each of the Debtors, and (iii) the provision of additional personnel to the Debtors (collectively, the “Engagement Personnel,” and together with the CRO and the Associate CRO, the “FTI Professionals”), each effective as of April 21, 2025 (the “Petition Date”) and pursuant to the terms and conditions set forth in that certain engagement letter (and the attachments and schedules thereto) between FTI

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.’s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

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

and the Debtors, dated March 6, 2025 (the “Engagement Letter”), a copy of which is attached as **Exhibit 1** to this Order; and (b) granting related relief, all as more fully set forth in the Application; 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 *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas, entered May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application 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 Application 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 Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”), if any; and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing, if any, 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. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Bankruptcy Local Rules 2014-1 and 2016-1, and the Complex Case Procedures, the Debtors are authorized to (a) employ and retain FTI as restructuring advisors to the Debtors, (b) designate Robert Del Genio as the CRO of the Debtors and David Rush as the Associate CRO of the Debtors, and (c) provide additional Engagement Personnel for the Debtors, each effective

as of the Petition Date, in accordance with the terms and conditions set forth in the Application, the Del Genio Declaration, and Engagement Letter, as modified by this Order.

2. The terms of the Engagement Letter, including, without limitation, the compensation provisions and the indemnification provisions, as modified by this Order, are reasonable terms and conditions of employment and are hereby approved as set forth herein; *provided, however*, that for the avoidance of doubt, nothing in this Order shall constitute any findings regarding, or the approval or any determination with respect to, the reasonableness of any Performance Fee.

3. Upon employment and retention by the Debtors, Mr. Del Genio shall be empowered and authorized to carry out all duties and responsibilities set forth in the Engagement Letter.

4. Notwithstanding anything in the Application, the Engagement Letter, the Del Genio Declaration, or any exhibit(s) related to the contrary:

- (a) FTI and its affiliates shall not act in any other capacity in connection with the above-captioned chapter 11 cases.
- (b) In the event the Debtors seek to have the FTI Professionals assume executive officer positions that are different than the position(s) disclosed in the Engagement Letter, or to materially change the terms of the engagement by either (i) materially modifying the functions of personnel, or (ii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed with the Court.
- (c) During the course of these chapter 11 cases, FTI will only seek reimbursement of actual and necessary expenses.
- (d) No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of these chapter 11 cases.
- (e) Any success fees, transaction fees, or other back-end fees shall be subject to approval by the Court at the conclusion of this case in conjunction with FTI's final fee application on a reasonableness standard and are not being pre-approved by entry of this Order. The rights of the U.S. Trustee, the Official Committee of Unsecured Creditors appointed in these chapter 11 cases, and all other parties in

interest to object to any such fees, including the Performance Fee, on any grounds, are fully preserved.

- (f) The Debtors are permitted to indemnify those persons serving as corporate officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' directors and officers insurance policy, except to the extent a claim or expense is judicially determined to have arisen from gross negligence, willful misconduct, bad faith, fraud, or self-dealing.
- (g) There shall be no indemnification of FTI or its affiliates, except as may be provided for in this Order.
- (h) For a period of three years after the conclusion of the engagement, neither FTI nor any of its affiliates shall make any investments in the Debtors or the reorganized Debtors.
- (i) The FTI Professionals serving as corporate officers of the Debtors shall be subject to the same fiduciary duties and obligations applicable to other persons serving in such capacity.

5. FTI is authorized to apply the Cash on Account and/or advanced payments to satisfy any unbilled or other remaining prepetition fees and expenses that FTI becomes aware of during its ordinary course billing review and reconciliation. Any remaining Cash on Account and/or advanced payments shall be held by FTI and applied against any amounts owed by the Debtors and approved by the Court in FTI's final fee application. After payment of FTI's fees approved in its final fee application, FTI shall remit any remaining funds in the Cash on Account to the Debtors or as otherwise directed by the Court.

6. FTI shall prepare and serve monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable orders and procedures of

this Court. For billing purposes, the FTI Professionals providing services on an hourly rate basis shall keep their time in one tenth (1/10) hour increments.

7. In the event that, during the pendency of these chapter 11 cases, FTI seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in FTI's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules and subject to approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code; *provided, however*, that FTI shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of FTI's fee applications in these chapter 11 cases.

8. To the extent further increases in rates set forth in the Application occur after entry of this Order, FTI shall file a notice with the Court and give the Debtors, the U.S. Trustee, and counsel to the Committee notice of any increases in the rates set forth in the Application. The notice shall explain the basis for the requested rate increases in accordance with Bankruptcy Code section 330(a)(3)(F) and state whether the Debtors have consented to the rate increase. The U.S. Trustee retains all rights to object to any hourly rate increases on all grounds, including the reasonableness standard set forth in Bankruptcy Code section 330, and the Court may review any rate increase pursuant to Bankruptcy Code section 330.

9. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Del Genio Declaration and this Order, the terms of this Order shall govern.

10. The Indemnification Provisions set forth in the Engagement Letter are subject to the following during the pendency of these chapter 11 cases:

- (a) Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtors, the Debtors are

authorized to indemnify, and shall indemnify, FTI for any claims arising from, related to, or in connection with the services to be provided by FTI as specified in the Application, but not for any claim arising from, related to, or in connection with FTI's performance of any other services other than those in connection with the engagement, unless such services and indemnification therefor are approved by this Court; and

- (b) The Debtors shall not have any obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, unless the Court determines that indemnification would be permissible pursuant to applicable law, or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, but determined by this Court, after notice and a hearing, to be a claim or expense for which FTI is not entitled to receive indemnity; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtors' chapter 11 cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the chapter 11 cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

11. Notwithstanding anything in the Application or the Engagement Letter to the contrary, to the extent that FTI uses the services of independent, third party, or non-affiliated contractors or subcontractors (the "Contractors") in the Chapter 11 Cases, FTI shall (a) pass-through the cost of such Contractors to the Debtors at the same rate that FTI pays the Contractors, (b) with respect to costs incurred by the Contractors, seek reimbursement for actual, reasonable and documented costs only, (c) ensure that the Contractors are subject to the same conflict checks

as were required for FTI in accordance with this retention; and (d) file or cause to be filed with the Court any disclosures required by Bankruptcy Rule 2014.

12. To the extent the Debtors wish to materially expand the scope of FTI's services beyond those services set forth in the Engagement Letters, the Del Genio Declaration, or this Order, the Debtors shall be required to seek further approval from this Court. The Debtors shall file notice of any proposed additional services (the "Proposed Additional Services") and any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, any official committee appointed in these chapter 11 cases, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within fourteen (14) days of the Debtors filing such notice, the Proposed Additional Services and any underlying engagement agreement may be approved by the Court by further order without further notice or hearing. To the extent any such party objects within fourteen (14) days of notice of such Proposed Additional Services being served, the Debtors will promptly schedule a hearing before the Court on such matter. The Proposed Additional Services will not be effective unless and until they are approved by the Court. All additional services shall be subject to the provisions of this Order.

13. Notwithstanding anything to the contrary in the Engagement Letters, the Limit of Liability provision found in § 6.3 of FTI's Standard Terms and Conditions does not apply to nor is it effective against the Debtors during the pendency of these chapter 11 cases.

14. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of the applicable Bankruptcy Rules.

15. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

Houston, Texas

Dated: _____, 2025

	THE HONORABLE CHRISTOPHER M. LOPEZ UNITED STATES BANKRUPTCY JUDGE
--	--

Exhibit 1

Engagement Letter



FTI Consulting, Inc.
1301 McKinney St.
Suite 3500
Houston, TX 77010
713.353.5400 telephone
832.383.7570 facsimile
www.fticonsulting.com

CONFIDENTIAL

March 6, 2025

Scott Andrew Ralston
Senior Vice President, General Counsel and Secretary
Ascend Performance Materials Holdings Inc.
1010 Travis Street, Suite 900
Houston, TX 77002

Re: Ascend Performance Materials

Dear Andrew:

This letter confirms that we, FTI Consulting, Inc. (“FTI”), have been retained by you, Ascend Performance Materials Holdings Inc. (the “Client”), to provide certain temporary employees to the Client and to provide restructuring and interim management services (the “Services”) in connection with the Client’s financial restructuring and the possible filing and prosecution of chapter 11 bankruptcy cases. This letter of engagement (the “Engagement Letter”) and the related Standard Terms and Conditions attached hereto as Exhibit “A” (together with the Engagement Letter, the “Engagement Contract”) constitute the Engagement Contract pursuant to which the Services will be provided (the provision of such Services, the “Engagement”). For the avoidance of doubt, the Engagement Contract forms the entire agreement between FTI and the Client relating to the Services and shall replace and supersede all previous proposals, pre-engagement confidentiality agreements, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services, including that letter of engagement dated as of February 7, 2025 by and among FTI and the Client (the “Prior Agreement”). The Client and FTI acknowledge and agree that, as of the date hereof, the Prior Agreement is no longer of any force or effect notwithstanding any provisions in the Prior Agreement that are contemplated to survive termination thereof.

1. Temporary Officers, Hourly Temporary Employees and Services

FTI will provide Robert Del Genio to serve as the Client’s Chief Restructuring Officer (the “CRO”) and David Rush as the Client’s Associate Chief Restructuring Officer (the “Associate CRO,” and together with the CRO, the “Temporary Officers”), and each shall report to the special committee (the “Committee”) in connection with the Engagement. The Temporary Officers, as well as any additional Hourly Temporary Staff, (as defined below), shall have such duties as the Committee may from time to time determine, and shall at all times report to and be subject to supervision by the Committee. Without limiting the foregoing, the Temporary Officers, as well as any Hourly Temporary Staff, shall work with other senior management of the Client, and other professionals, to provide the Services.

In addition to providing the Temporary Officers, FTI may also provide the Client with additional staff (the “Hourly Temporary Staff” and, together with the Temporary Officers, the “FTI Professionals”), subject to the terms and conditions of this Engagement Contract. The Hourly Temporary Staff may be assisted by or replaced by other FTI professionals reasonably satisfactory to the Committee, as required, who shall also become Hourly Temporary Staff for purposes hereof. FTI will keep the Committee

reasonably informed as to FTI’s staffing and will not add additional Hourly Temporary Staff to the Engagement without first consulting with the Client.

The Services may be performed by FTI or by any subsidiary or affiliate of FTI, as FTI shall determine. FTI may also provide Services through its or its subsidiaries’ or affiliates’ agents or independent contractors; *provided* that FTI shall only provide Services through its agents or independent contractors with the prior written consent of the Client (with email being sufficient). References herein to FTI and its employees shall be deemed to apply also, unless the context shall otherwise indicate, to employees of each such subsidiary, affiliate, and to any such agents or independent contractors and their employees. For purposes of this Engagement Contract, the term “affiliate” shall mean and include any entity that directly or indirectly controls, is controlled by, or is under common control with a party, for as long as such relationship remains in effect. The term “control” means the possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, through contract or otherwise.

If Client or any of Client’s affiliated entities files a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), FTI’s provision of the Temporary Officers will be subject to the approval of the bankruptcy court presiding over Client’s chapter 11 case (the “Bankruptcy Court”) and the services provided by the Temporary Officers shall be substantially similar as provided in this Agreement as modified by the retention order approved by the Bankruptcy Court. Client agrees, at Client’s expense, to file an application (the “Application”) to employ FTI as crisis and turnaround manager (or chief restructuring officer) effective as of the petition date pursuant to section 363 of the Bankruptcy Code. The Client agrees to file all required applications, including the Application, for the employment or retention of FTI at the earliest practical time.

As usual, our Engagement is to represent the Client and not its individual directors, officers, employees or shareholders. We, however, anticipate that we may provide information or advice to directors, officers or employees in their corporate capacities over the course of the Engagement.

The Services do not include (i) audit, legal, tax, environmental, accounting, actuarial, employee benefits, or insurance advice or similar specialist and other professional services which are typically outsourced and which shall be obtained directly where required by the Client at Client’s expense; or (ii) investment banking, valuation or securities analysis, or advising any party with respect to or representation of the Client in the purchase, sale or exchange of securities or representation of the Client in securities transactions. FTI is not a registered broker-dealer in any jurisdiction and will not offer advice or its opinion or any testimony on valuation or exchanges of securities or on any matter for which FTI is not appropriately licensed or accredited. An affiliate of FTI is a broker-dealer but is not being engaged by the Client to provide any investment banking or broker-dealer services. The Client agrees to supply office space, and office and support services to FTI as reasonably requested by FTI in connection with the performance of the Services.

2. Compensation to FTI

Fees in connection with this Engagement will be based upon the time incurred providing the Services, multiplied by our standard hourly rates, summarized as follows:

United States

	<u>Per Hour (USD)</u>
Senior Managing Directors	\$1,185 – 1,525
Directors / Senior Directors / Managing Directors	890 – 1,155
Consultants/Senior Consultants	485 – 820

Hourly rates are generally revised periodically. To the extent this Engagement requires services of our International divisions or personnel, the time will be multiplied by our standard hourly rates applicable on International engagements. Note that we do not provide any assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

In addition to the monthly fees and expenses, the Company agrees to pay FTI a performance fee (the "Performance Fee") of \$2,250,000 upon (i) the completion of a restructuring through confirmation of a Chapter 11 Plan of Reorganization, (ii) the consummation of any material recapitalization or debt restructuring of the Company, or (iii) consummation of one or more transactions for the sale of a majority of the Company's assets. The Performance Fee will be reduced to \$1,250,000 if any of the items are completed within 90 days of the date of this Engagement Letter.

All payments will be due upon receipt of the invoice. For your information and use, FTI's Taxpayer Identification Number is 52-1261113. If Client disputes any of the fees or expenses on a specific invoice, the Client shall notify FTI within thirty (30) days of receipt of the invoice of such a dispute. If Client fails to notify FTI within the thirty (30) day period, the Client shall have waived its right to dispute such invoice.

Nothing herein shall be construed as extending the due date of payments to be made by Client under this Engagement Contract. In addition to any other remedies set forth above, and any other remedies available at law, FTI reserves the right to suspend further Services until payment is received on past-due invoices. It is FTI's normal practice to be paid in full for all work performed to date prior to issuance of a report, deposition testimony and/or trial testimony. Client agrees to pay all court costs, attorney fees (whether or not contingent on collection from Client) and other expenses which may be associated with the collection of unpaid invoices. Should Client require FTI to submit invoices via an electronic billing service, any associated fees incurred for these electronic billing services shall be billed directly to the Client for reimbursement.

In addition to the fees outlined above, FTI will bill for reasonable and documented allocated and direct expenses which are likely to be incurred on your behalf during this Engagement. Allocated expenses include the cost of items which are not billed directly to the Engagement, but are incurred centrally, including out-of-pocket costs for data services and research materials which FTI subscribes to that we expect to use on your engagement, copying, phone charges, administrative support, and other overhead expenses that are not billed through as direct reimbursable expenses and are calculated at 3.0% of FTI's standard professional fees as described above. Direct expenses include reasonable, customary, and documented out-of-pocket expenses which are billed directly to the Engagement such as internet access, telephone, overnight mail, messenger, travel, meals, accommodations and other expenses specifically related to this Engagement. Further, if FTI and/or any of its employees are required to testify or provide evidence at or in connection with any judicial or administrative proceeding relating to this Engagement, FTI will be compensated by Client at its regular hourly rates and reimbursed for reasonable and documented allocated and direct expenses (including reasonable and documented counsel fees) with respect thereto. Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder.

Cash on Account

Client shall forward to FTI the amount of \$500,000, which funds FTI will hold “on account” to be applied to FTI’s professional fees, charges, and disbursements (including estimates of the foregoing) for the term of this Engagement Contract (the “Cash on Account”). To the extent the Cash on Account exceeds FTI’s fees, charges and disbursements after the completion of this Engagement Contract, FTI will refund any unused portion. Client agrees to increase or supplement the Cash on Account from time to time during the term of this Engagement Contract in such amounts as FTI reasonably determines are sufficient to ensure that FTI is not a pre-petition creditor in the event Client files a petition for relief under the Bankruptcy Code.

FTI will provide periodic invoices (not less frequently than monthly) to the Client for Services performed in the previous invoice period plus any incidental services and other amounts approved in writing. All expenses will be billed at cost without markup. In certain circumstances, an invoice may be for estimated fees, charges, and disbursements through a date certain. Each invoice constitutes a request for an interim payment against the fee to be determined at the conclusion of FTI’s Services.

Upon transmittal of an invoice, FTI may immediately draw upon the Cash on Account (as replenished from time to time) in the amount of the invoice. Client agrees that invoices are due upon receipt. Client further agrees to wire the invoice amount to FTI promptly as replenishment of the Cash on Account (together with any supplemental amount to which FTI and the Client mutually agree), without prejudice to the Client’s right to advise FTI of any differences Client may have regarding such invoice set forth in the below paragraph. FTI has the right, at any time, to apply any Cash on Account (as it may be supplemented from time to time) to any outstanding invoice (including amounts billed prior to the date hereof), subject to (and without prejudice to) the Client’s opportunity to review FTI’s invoices.

Client shall make any objections to the invoice in writing to FTI within fifteen (15) business days of the receipt of the invoice. FTI shall have fifteen (15) business days of receipt of such an objection to send a (i) revised invoice, (ii) written response to the objection(s), or (iii) combination of (i) and (ii). Any reductions made to an invoice pursuant to this paragraph shall be credited to the Cash on Account and reflected on the next invoice sent by FTI. Notwithstanding anything to the contrary in this Engagement Contract, Client agrees that it will not reduce or delay any replenishments to the Cash on Account due to any objections Client may have to a particular invoice. If Client reduces or delays any replenishments to the Cash on Account, Client agrees that FTI may cease work immediately and without notice until it receives the full amount due. To the extent the Parties are unable to consensually resolve a dispute over an invoice, such disputes shall be resolved in accordance with the applicable dispute resolution provisions of this Engagement Contract.

If Client or any of the Client’s entities become a debtor in one or more cases under the Bankruptcy Code, some fees, charges, and disbursements (whether or not billed) incurred before the filing of bankruptcy petitions (voluntary or involuntary) might remain unpaid as of the date of the filing. The unused portion, if any, of the Cash on Account will be applied to any such unpaid pre-petition fees, charges and disbursements. Any requisite court permission will be obtained in advance. We will then hold any portion of the Cash on Account not otherwise properly applied for the payment of any such unpaid pre-filing fees, charges and disbursements (whether or not billed) as Cash on Account to be applied against the final fee to be determined at the conclusion of FTI’s Services, which in the event of a chapter 11 filing shall be the final fee application filed and approved by the Bankruptcy Court.

Post-petition fees, charges and disbursements will be due and payable immediately upon entry of an order containing such court approval or at such time thereafter as instructed by the Bankruptcy Court. The Client understands that while the arrangement in this paragraph may be altered in whole or in part by the Bankruptcy Court, Client shall nevertheless remain liable for payment of court approved post-petition fees and expenses which are afforded administrative priority under Bankruptcy Code section 503(b)(1).

Bankruptcy Code section 1129(a)(9)(A) provides that a plan cannot be confirmed unless these priority claims are paid in full in cash on the effective date of any plan (unless the holders of such claims agree to different treatment). It is agreed and understood that the unused portion, if any, of the Cash on Account (as may be supplemented from time to time) shall be held by us and applied against the final fee to be determined at the conclusion of FTI's Services, which in the event of a chapter 11 filing shall be the final fee application filed and approved by the Bankruptcy Court.

Additional Provisions Regarding Fees:

- a) FTI may stop work or terminate the Engagement Contract immediately upon the giving of written notice to the Client (i) if payments are not made in accordance with this Engagement Contract, (ii) if the Application is not approved by the Bankruptcy Court, (iii) if the chapter 11 case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or (iv) if a chapter 11 Trustee or other responsible person is appointed.
- b) If, and only if, local bankruptcy rules or the order approving the Application so require, FTI shall file with and serve on creditors entitled to notice thereof, a statement of staffing, professional services, compensation or expenses, on a quarterly basis, or as the Bankruptcy Court or rules may direct, and creditors and other parties in interest shall have an opportunity to object thereto and request a hearing thereon. If FTI is employed post-petition as a "professional person" pursuant to section 327 of the Bankruptcy Code, Bankruptcy Court approval will generally be required to pay FTI's fees and expenses for post-petition Services. In most cases of this size and complexity, on request of a party in interest, bankruptcy courts permit the payment of interim fees during the case. Client agrees that in this situation it will, at the Client's expense, request the Bankruptcy Court to establish a procedure for the payment of interim fees during the case that would permit payment of interim fees on a monthly basis. If the Bankruptcy Court approves such a procedure, FTI will submit invoices on account against our final fee. These interim invoices will be based on such percentage as the Bankruptcy Court allows of our internal time charges and costs and expenses for the work performed during the relevant period and will constitute a request for an interim payment against the final fee to be determined at the conclusion of FTI's Services.
- c) In the event FTI is retained and employed under section 327 of the Bankruptcy Code, post-petition fees, charges and disbursements will be due and payable immediately upon entry of an order containing such court approval or at such time thereafter as instructed by the Bankruptcy Court. Client understands that while the arrangement in this paragraph may be altered in whole or in part by the Bankruptcy Court, Client shall nevertheless remain liable for payment of court approved post-petition fees and expenses, which are afforded administrative priority under section 503(b)(1) of the Bankruptcy Code. Section 1129(a)(9)(A) of the Bankruptcy Code provides that a plan cannot be confirmed unless these administrative claims are paid in full in cash on the effective date of any plan (unless the holders of such claims agree to different treatment). It is agreed and understood that the unused portion, if any, of the Cash on Account (as may be supplemented from time to time) shall be held by us and applied against the final fee application filed and approved by the Bankruptcy Court.
- d) Client agrees that FTI is not an employee of the Client and the FTI employees and independent FTI contractors who perform the Services are not employees of the Client, and they shall not receive a W-2 from the Client for any fees earned under this engagement, and such fees are not subject to any form of withholding by the Client. The Client shall provide FTI a standard form 1099 on request for fees earned under this Engagement.
- e) Copies of Invoices shall be sent by facsimile or email as follows:

To the Client at:
Tim Frielingsdorf
Chief Financial Officer
Ascend Performance Materials Holdings Inc.
1010 Travis Street, Suite 900
Houston, TX 77002
tfriel@ascendmaterials.com

3. Availability of Information

In connection with FTI's activities on the Client's behalf, the Client agrees (i) to furnish FTI with all information and data concerning the business and operations of the Client which FTI reasonably requests, and (ii) to provide FTI with reasonable access to the Client's officers, directors, partners, employees, retained consultants, independent accountants, and legal counsel. FTI shall not be responsible for the truth or accuracy of materials and information received by FTI under this Engagement Contract.

4. Terms and Conditions

The attached Standard Terms and Conditions set forth the duties of each party with respect to the Services. Further, this Engagement Letter and the Standard Terms and Conditions attached comprise the entire Engagement Contract for the provision of the Services to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations, and shall supersede all previous proposals, pre-engagement confidentiality agreements, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services.

5. Conflicts of Interest

FTI has undertaken a limited review of its records to determine FTI's professional relationships with the Client and this Engagement. From the results of such review, FTI was not made aware of any conflicts of interest or relationships that FTI believes would preclude FTI from performing the Services. However, as you know, FTI is a large consulting firm with numerous offices globally. FTI is regularly engaged by new clients, which may include one or more parties with interests potentially adverse to the Client. The FTI professionals providing Services hereunder will not accept an engagement that directly conflicts with this Engagement without Client's prior written consent.

6. Acknowledgement and Acceptance

Please acknowledge your acceptance of the terms of this Engagement Contract by signing the confirmation below and returning a copy to us at the above address.

If you have any questions regarding this Engagement Letter or the attached Standard Terms and Conditions, please do not hesitate to contact Robert Del Genio at (212) 813-1640.

Very truly yours,

FTI CONSULTING, INC.

By: Robert A. Del Genio
Name: Robert Del Genio
Title: Senior Managing Director

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms of this Engagement Contract, which includes the attached Standard Terms and Conditions.

ASCEND PERFORMANCE MATERIALS HOLDINGS INC.

By: Scott Andrew Ralston
Scott Andrew Ralston
Senior Vice President, General Counsel and Secretary

Date: 3/7/25

Contact Information of the person designated to receive & approve invoices:	
Name:	
Address:	
Phone:	
Email:	
AP Invoice Email (if applicable):	
Invoice Processing Information	
Please list any information required on the Invoice (i.e., Purchase Order #, Hours by Resource, Fees broken down by workstream, etc.)	
Require invoice submission via electronic billing system?	
If yes, please provide the necessary electronic billing system information (i.e., e-bill internet address):	

EXHIBIT A

FTI CONSULTING, INC.

STANDARD TERMS AND CONDITIONS

The following are the Standard Terms and Conditions on which we will provide the Services to you set forth within the attached letter of engagement with Ascend Performance Materials Holdings dated as of March 6, 2025 (the “Engagement Letter”). The Engagement Letter and the Standard Terms and Conditions (collectively the “Engagement Contract”) form the entire agreement between the Client and FTI relating to the Services to the exclusion of any other express or implied terms, including any conditions, warranties and representations, and shall replace and supersede all previous proposals, pre-engagement confidentiality agreements, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services. The headings and titles in the Engagement Contract are included to make it easier to read but do not form part of the Engagement Contract. Capitalized terms used but not defined shall have the meanings assigned in the Engagement Letter to which these Standard Terms and Conditions are attached.

1. Reports and Advice

- 1.1 **Use and purpose of advice and reports** — Any advice given or report issued by FTI is provided solely for Client’s use and benefit and only in connection with the purpose for which the Services are rendered. Unless required by law, Client shall not provide any advice given or report issued by FTI to any third party, or refer to FTI or the Services, without FTI’s prior written consent, which shall be conditioned on the execution of a third party release letter in the form provided by FTI and attached hereto as Schedule A. Notwithstanding the foregoing, the Client may disclose any advice given or report issued by FTI to its affiliates and its and their respective directors, officers, employees, shareholders, existing lenders, legal counsel, accountants and auditors who have a need to know, and who are bound by written agreements and/or rules of professional conduct/ethics to maintain confidentiality. In no event, regardless of whether consent has been provided, shall FTI assume any responsibility to any third party to which any advice or report is disclosed or otherwise made available.

2. Information and Assistance

- 2.1 **Provision of information and assistance** – FTI’s performance of the Services is dependent upon Client providing FTI with such information and assistance as FTI may reasonably require from time to time. FTI shall rely on such information without independent verification. If FTI’s performance of its obligations under this Engagement Contract is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, or employees, FTI shall not be deemed in breach of its obligations under this Engagement Contract or otherwise liable for any damages sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.
- 2.2 **Punctual and accurate information** – Client shall use reasonable skill, care and attention to ensure that all information FTI may reasonably require is provided on a timely basis and is accurate, complete, and relevant for the purpose for which it is required. Client shall also notify FTI if Client subsequently learns that any information provided is incorrect or inaccurate or otherwise should not be relied upon.
- 2.3 **No assurance on financial data** – While FTI’s work may include an analysis of financial and accounting data, the Services will not include an audit, compilation or review of any kind of any financial statements or components thereof. Client management will be responsible for any and all financial information they provide to FTI during the course of this Engagement, and FTI will not examine, compile, or verify any such financial information. Moreover, the circumstances of the Engagement may cause FTI’s advice to be limited in certain respects based upon, among other matters, the extent of sufficient and available data and

the opportunity for supporting investigations in the time period. Accordingly, as part of this Engagement, FTI will not express any opinion or other form of assurance on financial statements of the Client or any other person.

- 2.4 **Prospective financial information** - In the event the Services involve prospective financial information, FTI's work will not constitute an examination or compilation, or apply agreed-upon procedures, in accordance with standards established by the American Institute of Certified Public Accountants or otherwise, and FTI will express no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. FTI will take no responsibility for the achievability of results or events projected or anticipated by the Client's management.

3. Additional Services

- 3.1 **Responsibility for other parties**— Client shall be solely responsible for the work and fees of any other party engaged by Client to provide services in connection with the Engagement regardless of whether such party was introduced to Client by FTI. Except as provided in this Engagement Contract (including section 2 of the Engagement Letter with respect to the retention of certain agents and independent contractors), FTI shall not be responsible for providing or reviewing the advice or services of any such third party, including advice as to legal, regulatory, accounting or taxation matters. Further, FTI acknowledge that it is not authorized under this Engagement Contract to engage any third party to provide services or advice to Client, other than FTI's affiliates, agents, or independent contractors engaged to provide Services, without Client's written authorization.

4. Confidentiality

- 4.1 **Restrictions on confidential information**— Both parties agree that any confidential information received from the other parties shall only be used for the purposes of providing or receiving Services under this or any other contract between us. Except as provided below, no party will disclose any other contracting party's confidential information to any third party without such party's consent. Confidential information shall not include information that:

- 4.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 4.1;
- 4.1.2 is acquired from a third party who, to the recipient party's knowledge, owes no obligation of confidence in respect of the information; or
- 4.1.3 is or has been independently developed by the recipient (without the use of confidential information).

- 4.2 **Disclosing confidential information** – Notwithstanding Clauses 1.1 or 4.1 above, all parties will be entitled to disclose confidential information to a third party to the extent that this is required by valid legal process, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable not less than 2 business days' notice in writing is first given to the other parties.

- 4.3 **Citation of Engagement** – Without prejudice to Clauses 4.1 and 4.2 above, the Client hereby agrees that FTI shall be entitled, to the extent that our engagement becomes known to the public, to cite the performance of the Services hereunder to our clients and prospective clients as an indication of our experience and use the Client name and logo in connection with such disclosure, unless FTI and the Client specifically agree otherwise in writing.

- 4.4 **Internal quality reviews** – Notwithstanding the above, FTI may disclose any information referred to in this Clause 4 to any other FTI entity or use it for internal quality reviews; *provided*, that FTI shall cause such persons to keep such information confidential in accordance with the terms of this Engagement Contract.

4.5 **Maintenance of workpapers** – Notwithstanding the above, FTI may keep one archival set of our working papers from the Engagement, including working papers containing or reflecting confidential information, in accordance with our internal policies; *provided*, that FTI shall keep such materials confidential in accordance with the terms of this Engagement Contract.

4.6 **Data Protection** - In this paragraph, the terms “controller”, “personal data”, “processed”, “processor”, “processing” shall have the meaning given to them, or any equivalent terms, in applicable data protection laws. FTI and the Client will each act as separate and individual controllers in relation to any personal data processed by the Client or FTI in connection with this Engagement Contract. FTI and the Client will each comply with its own respective obligations under applicable data protection laws in relation to their processing of personal data under this Engagement Contract. Should the Services involve cross border transfers of personal data, FTI and the Client hereby enter into Module 1 of the EU Standard Contractual Clauses published by the European Commission and the UK Addendum to the EU Standard Contractual Clauses published by the ICO (where applicable) (together the “**Standard Contractual Clauses**”), with either the Client or FTI acting as data exporter and either the Client or FTI as data importer, as appropriate), in respect of any international transfer of personal data which would be prohibited by applicable data protection law in the absence of the Standard Contractual Clauses, in the form and manner set out at <https://fitechnology.com/trust/cidta>. The Client acknowledges that FTI may appoint processors to process personal data on its behalf in connection with the Services. Such processors may be located overseas. Where required by applicable data protection law, FTI will enter into appropriate safeguards with these processors. Client and FTI agree that no “sale” (as that term is defined under applicable data protection laws) of personal data is intended as part of the Engagement Contract, and both parties will take steps to ensure no sale occurs. The parties agree that any provision of personal data by one party to another under the Engagement Contract is necessary to perform a business purpose and is not part of, and explicitly excluded from, the exchange of consideration, or any other thing of value, between the parties.

5. Termination

5.1 **Termination of Engagement with notice**—This Engagement Contract is terminable by the Client or by FTI at any time upon the giving of thirty (30) days written notice. Upon such termination by the Client (the “Termination Date”), FTI shall cease work and the Client shall have no further obligation for fees and expenses of FTI arising or incurred after the Termination Date; provided, however, that, notwithstanding any termination by the Client or by FTI in the circumstances described in paragraph (a) under “Additional Provisions Regarding Fees” in the Engagement Letter:

a) the Client shall reimburse FTI for its out-of-pocket expenses (the “Termination Expenses”) incurred in connection with commitments made by FTI prior to the Termination Date with respect to advance travel arrangements reasonably incurred, to the extent FTI is unable to obtain refunds of such expenses. FTI shall provide the Client with reasonable documentation to substantiate all Termination Expenses for which payment is requested; and

b) unless FTI is in material default of this Agreement, termination shall not affect FTI’s entitlement to the Completion Fee; provided, however, that FTI shall not be entitled to the Completion Fee if it terminates this Agreement for reasons other than the circumstances described in paragraph (a) under “Additional Provisions Regarding Fees” in the Engagement Letter.

5.2 **Continuation of terms** — The terms of the Engagement that by their context are intended to be performed after termination or expiration of this Engagement Contract, including but not limited to, Clauses 2 and 4 of the Engagement Letter, and Clauses 1.1, 4, 6, and 7 of these Standard Terms and Conditions, are intended to survive such termination or expiration and shall continue to bind all parties.

6. Indemnification, Insurance and Liability Limitation

6.1 **Indemnification** – The Client agrees to indemnify and hold harmless FTI and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contractors and employees

(collectively “Indemnified Persons”) from and against any and all claims, liabilities, damages, obligations, costs and expenses (including reasonable and documented attorneys’ fees and expenses and costs of investigation) arising out of or relating to your retention of FTI, the execution and delivery of this Engagement Contract, the provision of Services or other matters relating to or arising from this Engagement Contract, except to the extent that any such claim, liability, obligation, damage, cost or expense shall have been determined by final non-appealable order of a court of competent jurisdiction to have resulted from the gross negligence, bad faith, fraud, or willful misconduct of the Indemnified Person or Persons in respect of whom such liability is asserted (an “Adverse Determination”). The Client shall pay damages and reasonable and documented expenses, including reasonable and documented legal fees and disbursements of counsel as incurred in advance. FTI agrees that it will reimburse any amounts paid in advance to the extent they relate directly to an Adverse Determination.

Subject to any limitation post-petition required by the Bankruptcy Court, the Client agrees to indemnify and hold harmless FTI and its shareholders, directors, officers, managers, employees, contractors, agents and controlling persons (each, an “Indemnified Party”) from and against any losses, claims, damages or expenses, or if same was or is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation, in each case by reason of (or arising in part out of) any event or occurrence related to this Engagement Contract or any predecessor agreement for services or the fact that any Indemnified Party is or was an agent, officer director, employee or fiduciary of the Client, or by reason of any action or inaction on the part of any Indemnified Party while serving in such capacity (an “Indemnifiable Event”) against expenses (including reasonable attorneys’ fees and disbursements), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any Indemnifiable Event. The Application shall include the assumption by the Client of FTI’s right to indemnification in respect of its actions under this Engagement Contract prior to the petition date. The Indemnified Party shall promptly forward to the Client all written notifications and other matter communications regarding any claim that could trigger the Client’s indemnification obligations under this Section 6. If the Client so elects or is requested by an Indemnified Party, the Client will assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the reasonable fees and disbursements of such counsel. In the event, however, such Indemnified Party is advised by counsel that having common counsel would present such counsel with a conflict of interest or if the defendants in, or targets of, any such action or proceeding include both an Indemnified Party and the Client, and such Indemnified Party is advised by counsel that there may be legal defenses available to it or other Indemnified Parties that are different from or in addition to those available to the Client, or if the Client fails to assume the defense of the action or proceeding or to employ counsel reasonably satisfactory to such Indemnified Party, in either case in a timely manner, then such Indemnified Party may employ separate counsel to represent or defend it in any such action or proceeding and the Client will pay the reasonable fees and disbursements of such counsel; provided, however, that the Client will not be required to pay the fees and disbursements of more than one separate counsel (in addition to local counsel) for an Indemnified Party in any jurisdiction in any single action or proceeding. In any action or proceeding the defense of which the Client assumes, the Indemnified Party will have the right to participate in such litigation and to retain its own counsel at such Indemnified Party’s own expense. The Client further agrees that the Client will not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed, or conditioned), settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Party or any other Indemnified Party is an actual or potential party to such claim, action, suit or proceeding) unless (i) to the extent that such settlement, compromise or consent purports directly or indirectly to cover the Indemnified Party or any other Indemnified Party, such settlement, compromise or consent includes an unconditional release of the Indemnified Party and each other Indemnified Party from all liability arising out of such claim, action, suit or proceeding, or (ii) to the extent that such settlement, compromise or consent does not purport directly or indirectly to cover the Indemnified Party or any other Indemnified Party, the Client has given the Indemnified Party reasonable prior written notice thereof and used all reasonable efforts, after consultation with the Indemnified Party, to obtain an unconditional release of the other Indemnified Parties hereunder from all liability arising out of such claim, action, suit or proceeding. The Indemnified Party

shall not enter into any closing agreement or final settlement that could trigger the Client's indemnification obligations under this Section 6 without the written consent of the Client, which shall not unreasonably be withheld or delayed or conditioned. The Client will not be liable for any settlement of any action, claim, suit or proceeding affected without the Client's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned, but if settled with the consent of the Client or if there be a final judgment for the plaintiff, the Client agrees to indemnify and hold harmless the Indemnified Party from and against any loss or liability by reason of such settlement or judgment, as the case may be.

- 6.2 **Insurance** –In addition to the above indemnification and provision regarding advancement of fees/expenses, FTI employees serving as directors or officers of the Client or its affiliates will receive the benefit of the most favorable indemnification and advancement provisions provided by the Client to its directors, officers and any equivalently placed employees, whether under the Client's charter or by-laws, by contract or otherwise. The Client shall specifically include and cover employees and agents serving as directors and officers of the Client or its affiliates from time to time with direct coverage under the Client's policy for liability insurance covering its directors, officers and any equivalently placed employees. Prior to FTI accepting any director or officer position, the Client shall, at the request of FTI, provide FTI a copy of its current D&O policy, a certificate of insurance evidencing the policy is in full force and effect, and a copy of the signed board resolutions and any other document that FTI may reasonably request evidencing the appointment and coverage of the indemnitees. The Client shall maintain such D&O insurance for the period through which claims can be made against such persons. In the event the Client is unable to include FTI employees and agents under the Client's policy or does not have first dollar coverage acceptable to FTI in effect for at least \$10 million, FTI may, subject to the prior written consent of the Client, attempt to purchase a separate D&O insurance policy that will cover the FTI employees and agents only. The cost of the policy shall be invoiced to the Client as an out-of-pocket expense. Notwithstanding anything to the contrary, the Client's indemnification obligations in this Section 6 shall be primary to (and without allocation against) any similar indemnification and advancement obligations of FTI, its affiliates and insurers to the indemnitees (which shall be secondary), and the Client's D&O insurance coverage for the indemnitees shall be specifically primary to (and without allocation against) any other valid and collectible insurance coverage that may apply to the indemnitees (whether provided by FTI or otherwise). In connection with this Engagement, Client represents to FTI that (i) it has timely remitted and will continue to timely remit to the appropriate beneficiaries all employee source deductions, payroll and other taxes, benefits deductions, and contribution to employee benefit programs, and has timely collected and remitted sales and use and other similar taxes to appropriate collecting authorities and will continue timely to do so; (ii) there is no litigation or other proceeding pending, or to knowledge of Client, threatened (nor is Client aware of facts that could give rise to such), in each case that seeks or could give rise to personal liability of officers and directors of Client; and (iii) Client has been in continuing compliance with all applicable laws and regulations concerning the discharge, treatment, storage, transportation or use of hazardous materials and is aware of no facts or circumstances that could give rise to Client responsibility or liability under such laws and regulations.
- 6.3 **Limitation of liability** – Client agrees that no Indemnified Person shall be liable to the Client, or its successors, affiliates, or assigns, for damages in excess of the total amount of the fees paid to FTI under this Engagement Contract. Without limiting the generality of the foregoing, in no event shall any Indemnified Person be liable for consequential, indirect or punitive damages, damages for lost profits or opportunities or other like damages or claims of any kind. In the event that FTI agrees hereunder and/or in writing to accept liability to more than one party, the limit of FTI's liability set forth in this Section 6.3 shall be shared between the parties, and in no event shall FTI's aggregate liability exceed the total amount of the fees paid to FTI under this Engagement Contract.
7. **Governing Law, Jurisdiction, WAIVER OF JURY TRIAL, Compliance with Law, Notice and Miscellaneous**
- 7.1 **Governing Law.** The Engagement Contract shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the choice of law provisions thereof.
- 7.2 **Jurisdiction; Service.** - The United States District Court for the Southern District of New York and the

appropriate Courts of the State of New York sitting in the Borough of Manhattan, City of New York shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Engagement Contract and any matter arising from it. If cases under the Bankruptcy Code are commenced, the Bankruptcy Court having jurisdiction over the Client's Bankruptcy case shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Engagement Contract and any matter arising from it. The parties submit to the jurisdiction of such courts and irrevocably waive any right they may have to object to any action being brought in these courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction. Each party agrees that it may be served with legal process, including a summons and complaint, by recognized overnight courier (e.g., Federal Express, UPS) and agrees to waive personal service of the same in any action or lawsuit. Service under this provision may be directed to each party's notice address as provided in Section 7.5. The notice address shall be deemed valid unless updated or changed by written notice.

7.3 **WAIVER OF JURY TRIAL** – TO FACILITATE JUDICIAL RESOLUTION AND SAVE TIME AND EXPENSE, THE CLIENT AND FTI IRREVOCABLY AND UNCONDITIONALLY AGREE TO WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR THIS ENGAGEMENT CONTRACT.

7.4 **Compliance with Laws** - Each of FTI and the Client agrees that it will comply with all anti-corruption, anti-money laundering, anti-bribery and other economic sanctions laws and regulations of the United States, United Kingdom, European Union and United Nations (collectively, the "ABC/AML/Sanction Laws") in connection with this Engagement. The Client further agrees that it shall not, and it shall procure its employees not to, pay or cause other person(s) to pay FTI using any funds that would result in a violation of any of the ABC/AML/Sanction Laws by either Client or FTI, or otherwise take any action that would result in a violation of any of the ABC/AML/Sanction Laws by either Client or FTI. Each of FTI and the Client shall promptly notify the other party in the event of any violation or failure to comply with ABC/AML/Sanction Laws in connection with this Engagement, or allegations relating thereto, by such party or its directors, officers, employees or agents.

7.5 **Notice** - All notices, requests, consents, claims, demands, waivers, and other formal communications under this Engagement Contract shall be in writing and shall be deemed to have been given (a) when delivered by hand, (b) when received by the addressee, if sent by a nationally recognized overnight courier (evidence of receipt requested), (c) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient (in each case, if successfully transmitted and with a copy sent via one of the other methods of delivery specified in this paragraph), or (d) upon delivery, if mailed by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below, or at such other address for a party as shall be specified in a notice given in accordance with this paragraph:

If to FTI: FTI Consulting, Inc.
 555 12th Street NW, Suite 700
 Washington, D.C., 20004
 Attn: Legal Department
 Email: legal@fticonsulting.com

If to Client: Scott Andrew Ralston
 Senior Vice President, General Counsel and Secretary
 Ascend Performance Materials Holdings Inc.
 1010 Travis Street, Suite 900
 Houston, TX 77002
sarals@ascendmaterials.com

7.6 **Miscellaneous** – Client shall not assign any of its rights or delegate any of its obligations under this Engagement Contract without the prior written consent of FTI. Any purported assignment or delegation in violation of this provision is null and void. No assignment or delegation relieves Client of any of its

obligations under this Engagement Contract. This Engagement Contract represents the entire understanding of the parties hereto and supersedes any and all other prior agreements among the parties regarding the subject matter hereof; shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors, and permitted assigns; may be executed and sent electronically (followed by originals sent via regular mail if requested by a party), and in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; and may not be waived, modified or amended unless in writing and signed by a representative of the Client and FTI. The provisions of this Engagement Contract shall be severable. No failure to delay in exercising any right, power or privilege related hereto, or any single or partial exercise thereof, shall operate as a waiver thereof. This Engagement Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason hereof.

SCHEDULE A

FTI STANDARD RELEASE LETTER

[Date]

Third Party Name
ADDRESS
CITY, STATE, ZIP

To whom it may concern.

Pursuant to that engagement letter dated _____, 202_ (the “Engagement Letter”) between FTI Consulting, Inc. (“FTI”) and _____ (“Client”), FTI has been engaged to perform certain services solely for the Client (the “Services”) in connection with _____.

Client has requested that FTI provide [name of recipient] (the “Recipient”) access to the report of its findings dated [date] and including any subsequent revisions, updates or addendums thereto (together, the “Report”). Recipient acknowledges that this Report was prepared at the direction of Client, was performed exclusively for Client’s sole benefit and use, may not include all procedures deemed necessary for the purposes of Recipient, and that certain findings and information may have been communicated to Client that are not reflected in the Report. Recipient further acknowledges that (a) the Report is being provided for informational purposes only; (b) the Report shall not constitute, either expressly or impliedly, any representation or affirmation by FTI as to the accuracy, completeness and/or fairness of presentation of the Report or any statements or information contained therein; and (c) Recipient will make any decisions based on its own investigation, due diligence and analysis, independent of, and without reliance on or reference to, the contents of the Report or any other opinions or conclusions of FTI.

In consideration of FTI allowing Recipient access to the Report and, if requested by Recipient, discussing the Report, Recipient agrees that it does not acquire any rights as a result of such access that it would not otherwise have had and acknowledges that FTI does not assume any duties or obligations to Recipient in connection with such access.

Recipient agrees to release FTI and its personnel from any claims or causes of action by Recipient that arise as a result of FTI permitting Recipient access to the Report. Recipient agrees not to sue or participate in any way (except as required by a validly issued court order or subpoena) in any legal proceeding, dispute, or cause of action against FTI arising out of or relating to the Report, including any claim that Recipient has in any way relied upon the Report. Recipient acknowledges that FTI does not owe or accept a duty to Recipient, whether in contract or in tort, or however otherwise arising.

Further, Recipient agrees not to disclose or distribute the Report, or any other information received orally or in writing from FTI, to any other parties without FTI’s prior written consent. Notwithstanding the foregoing, Recipient may disclose the Report (a) to its Affiliates and its and their respective directors, officers, and employees, (the “Representatives”) who have a need to receive the Report in connection with the purpose for which the Report is being provided to you and solely for informational purposes, (b) to its legal counsel, accountants and auditors who are bound by written agreements and/or rules of professional conduct/ethics to maintain the Report as confidential (“Professional Advisors”), (c) to its advisors (including but not limited to financial advisors), consultants, lenders and/or potential investors, provided that, before any disclosure of the Report, each advisor, consultant, lender and/or potential investor executes its own release letter with FTI with terms no less restrictive than those contained herein, provided, further that Recipient remains responsible for any breach of this letter agreement by its Representatives or Professional Advisors. Recipient may also disclose the Report as required by any applicable law, or by order or ruling of any competent judicial, governmental, regulatory or supervisory body, provided, to the extent legally permissible, Recipient provides FTI with written notice promptly upon becoming aware of such obligation and

reasonably cooperates with FTI, at FTI's expense, in FTI's efforts to obtain a protective order and/or limit the scope of such disclosure. Notwithstanding the foregoing, no notice is required regarding any disclosure of any information to a regulator or governmental agency having jurisdiction over Recipient or its Affiliates in the course of such regulator's or governmental agency's routine examination, reporting, audit or inspection not targeting the Report or the Services. For purposes of this letter agreement, the term "Affiliate" shall mean and include any entity that directly or indirectly controls, is controlled by, or is under common control with Recipient, for as long as such relationship remains in effect. The term "control" means the possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, through contract or otherwise.

Recipient's obligations hereunder do not prohibit Recipient from disclosing, without attribution or reference in any matter to FTI or the Report, any information that: (a) is or becomes publicly available other than by a breach of this letter agreement; (b) is or becomes available to Recipient from a third party who is known by Recipient to not be prohibited from disclosing such information by a contractual, or legal obligation; (c) is known to Recipient prior to the date of this letter agreement; or (d) that Recipient develops independently without the use of or reliance on the Report. FTI is not authorized to and does not waive any other non-use or non-disclosure obligations which may apply to Client's or any other party's information that may be subject to confidentiality agreements.

This letter agreement constitutes the entire agreement between the parties regarding the subject matter hereof and shall be governed by the laws of the State of New York, without giving effect to the choice of law provisions thereof.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to FTI.

Sincerely,

[INSERT FTI SMD or MD name here]
[Senior Managing Director/Managing Director]
FTI Consulting, Inc.

Acknowledged, accepted and agreed:

[ENTER RECIPIENT NAME]

By: _____
(Name of Company official)