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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**DEBTOR'S MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105(a) AND 363(b)
OF THE BANKRUPTCY CODE, AUTHORIZING DEBTOR TO RETAIN FTI
CONSULTING, INC., DESIGNATING ALAN BOYKO AS CHIEF TRANSFORMATION
OFFICER FOR THE DEBTOR EFFECTIVE AS OF THE PETITION DATE, AND
APPROVING THE ENGAGEMENT AGREEMENT RELATED THERETO**

The above-captioned debtor and debtor in possession (the “Debtor”), by and through its proposed counsel, hereby submits this motion (the “Motion”) for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”): (i) authorizing the Debtor to retain and employ FTI Consulting, Inc. (“FTI”), to provide Alan Boyko (“Mr. Boyko”) as the Debtor’s Chief Transformation Officer (the “CTO”) and provide related financial advisory services in connection with the above-captioned chapter 11 case, effective as of the Petition Date (as defined below), and (ii) approving the engagement agreement (the “Engagement Agreement”), a true and correct copy of which is attached to the Proposed Order as **Exhibit 1**. In support of this Motion, the Debtor relies upon and incorporates by reference the Declaration of Adrian Boyko in Support of this Motion (the “Boyko Declaration”) attached hereto as **Exhibit A**. In further support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b), and as a result, this Court may enter final orders.
2. The Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.
3. Venue of the chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.
4. The bases for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code.

BACKGROUND

5. On December 9, 2024, (the “Petition Date”) the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Based in Salt Lake City, Utah, the Company is an innovator in the beverage industry, offering integrated beverage can production, filling and warehousing capacity at a single location. The Company’s state-of-the art custom production and filling facility came online in 2022, and now produces and fills tens of millions of aluminum beverage cans per year for some of the most well-known beverage companies in the world. The Company also provides beverage formulation and mixing services. The Company’s integration of can production, beverage formulation and can filling services eliminates customers’ need to transport cans between production and filling sites, reducing freight costs. In addition, the Company operates two onsite warehouses for finished goods, cans and raw materials to provide warehousing logistics services for its customers.

7. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no official committee of unsecured creditors has been appointed in this chapter 11 case.

8. Additional information regarding the Debtor’s businesses, capital structure, and the events leading up to the Petition Date is set forth in the *Declaration of Alan Boyko, Chief*

Transformation Officer of the Debtor, in Support of Debtor's Chapter 11 Petition and First Day Motions (the "First Day Declaration"),¹ which is fully incorporated herein by reference.

RELIEF REQUESTED

9. By this Motion, the Debtor requests entry of the Proposed Order (i) authorizing the Debtor to retain and employ FTI to provide Mr. Boyko as the Debtor's CTO and provide related financial advisory services, effective as of the Petition Date, subject to further order of the Court, pursuant to the terms of the engagement letter dated November 25, 2024, attached hereto as **Exhibit B** (the "Engagement Agreement") and (ii) approving the Engagement Agreement.²

RELEVANT INFORMATION

A. FTI's Qualifications

10. FTI is a global business advisory firm offering a wide range of services, including corporate finance, interim management, economic consulting, forensic and litigation consulting, strategic communications, and technology solutions. FTI's debtor advisory services include a wide range of activities targeted at stabilizing and improving a company's financial position. FTI's expertise relevant to the chapter 11 case includes: (a) turnaround and restructuring consulting; (b) interim management, including serving in executive and management roles; (c) managing communications with lenders, board members, employees, investors, and creditor constituencies, (d) strategic business plan development; (e) refinancing and restructuring of debt; (f) marketing, management, and administration of asset disposition; (g) cash management and liquidity enhancement; (h) operational improvement; and (i) bankruptcy services.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration or the Engagement Agreement, as applicable.

² To the extent there is any inconsistency between this Motion, the Proposed Order, and the Engagement Agreement, the Proposed Order shall govern.

11. In addition, FTI and its professionals have assisted and advised numerous financially troubled companies from a variety of industries in complex financial restructurings and liquidations, both out of court and in chapter 11 cases. FTI professionals have been retained in numerous large, complex chapter cases, including, among others: *In re LaVie Care Centers, LLC, et al.*, No. 24-55507 (PMB) (Bankr. N.D. Ga. 2024); *Pipeline Health System, LLC*, No. 22-90291 (MI) (Bankr. S.D. Tx. 2022); *In re GBG USA Inc.*, No. 21-11368 (MEW) (Bankr. S.D.N.Y. 2021); *In re Rental Car Intermediate Holdings, LLC*, No. 20-11247 (MFW) (Bankr. D. Del. 2022); *In re Brooks Brothers Group, Inc., et al.*, No. 20-11785 (CSS) (Bankr. D. Del. 2020); *In re Westinghouse Electric Co.*, No. 17-10751 (MEW) (Bankr. S.D.N.Y. 2017).

12. As set forth in the Engagement Agreement, FTI has made Mr. Boyko available to serve as CTO to the Debtor and has made additional individuals available who will provide various other critical management services to the Debtor (the “Additional Personnel”).

B. Mr. Boyko’s Qualifications

13. Mr. Boyko began serving as one of the Debtor’s transformation officers on November 15, 2023. On June 3, 2024, the Debtor appointed Mr. Boyko as its sole CTO to facilitate ongoing operations and financial matters and, ultimately, to prepare the Debtor for this chapter 11 proceeding and proposed sale. He has over 18 years of experience as a full-time restructuring advisor. In 2001, he received a B.S. in Finance from Slippery Rock University and in 2006, he received an M.B.A. from the University of Notre Dame. Mr. Boyko is a Certified Insolvency and Restructuring Advisor and a Certified Turnaround Professional

14. In providing prepetition professional services to the Debtor, FTI and Mr. Boyko have become familiar with the Debtor and its businesses, including the Debtor’s financial affairs, debt structure, operations, and related matters. Having worked closely with the Debtor’s management and its other advisors, FTI and Mr. Boyko have developed relevant experience and

expertise regarding the Debtor that will assist in providing effective and efficient services in this chapter 11 case. Accordingly, FTI and Mr. Boyko are both well-qualified and uniquely able to represent the Debtor in this chapter 11 case in an efficient and timely manner.

C. Services to be Provided

15. As stated above, under the Engagement Agreement, FTI has assigned Mr. Boyko to serve as the Debtor's CTO and has assigned the Additional Personnel to perform other services set forth in the Engagement Agreement. The terms and conditions of the Engagement Agreement were negotiated between the Debtor and FTI and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Subject to the Court's approval, the Debtor anticipates that FTI will perform the following financial advisory services (collectively, the "Services"), among others, pursuant to the terms and provisions of the Engagement Agreement, as necessary and appropriate, and as mutually agreed upon by FTI and the Debtor³:

- a. Assist the Company, Vobev's senior management and its other advisors to revise and update its 2025 business plan and forecasted financial performance;
- b. As directed by the Independent Committee, lead management of and ongoing reporting requirements to the senior secured lender and its advisors;
- c. Assist the Company and its advisors, when requested, in the preparation, design, and presentation of proposals to creditors and investors regarding terms of potential amendments, capital raising initiatives, modifications, and/or a sales process;
- d. Assist the Company and its other advisors, only if directed by the Independent Committee, in the preparation of additional strategic options for the business;

³ The summaries of the Engagement Agreement contained in this Motion are provided for purposes of convenience only. In the event of any inconsistency between the summaries contained herein and the terms and provisions of the Engagement Agreement, the terms of the Engagement Agreement shall control.

- e. Provide periodic status reports to senior management, the Company's Board of Directors, and the other advisors with respect to the progress of the overall engagement, as requested; and,
- f. Perform other customary financial and strategic advisory services as may be reasonably requested by the Company, and as may be customary in this type of engagement.

16. During the Debtor's chapter 11 case, the Services also will include, but not be limited to:

- a. Assistance with the preparation of financial related disclosures required by the Court, including the Schedules of Assets and Liabilities, the Statement of Financial Affairs and Monthly Operating Reports;
- b. Assistance with the identification and implementation of short-term cash management procedures;
- c. Assistance and advice with respect to the identification of core business assets and the disposition of assets or liquidation of unprofitable operations;
- d. Assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;
- e. Assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Court approval is sought;
- f. Attendance at meetings and assistance in discussions with potential investors, banks, the Debtor's prepetition debt holders, the Committee and any other official committee appointed in this chapter 11 case, the U.S. Trustee, and other parties in interest and professionals hired by the same, as requested;
- g. Analysis of creditor claims by type, entity and individual claim, including assistance with development of databases, as necessary, to track such claims;
- h. Assistance in the preparation of information and analysis necessary for the confirmation of a plan in this chapter 11 case; and

- i. Such other general business consulting or other assistance as Debtor's management or counsel may deem necessary that are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this chapter 11 case.

17. These Services are necessary to the Debtor's efforts to conduct an orderly restructuring in this chapter 11 case and conduct a value-maximizing sale process. When necessary, the individuals working on this matter will be assisted by or replaced by various professionals at various levels.

18. The Services provided by FTI will complement, and not duplicate, the services to be rendered by any other professional retained in this chapter 11 case.

D. Professional Compensation

19. The following outlines the fee and expense structure (the "Fee and Expense Structure") for FTI's engagement: The Debtor will compensate FTI at the rate of \$500,000 per month, with this rate effective as of December 1, 2024. The final month of fixed fees will be prorated through the earliest to occur of (i) the effective date of a plan, (ii) dismissal of any chapter 11 filing, or (iii) conversion of any chapter 11 filing should that date not coincide with a month-end. Any time billed subsequent to that date will be billed at the hourly rates below unless otherwise negotiated between the parties. Fees will be billed monthly and are due within five (5) business days of invoice receipt.⁴

Professional Level	Rates per Hour
Senior Managing Director	\$1,185 - \$1,525
Directors/ Senior Directors/ Managing Director	\$890 - \$1,155
Consultants/ Senior Consultants	\$485 - \$820
Paraprofessionals	\$190 - \$385

⁴ To the extent there is any inconsistency between the summary of the Fee and Expense Structure set forth in this Motion and the Fee and Expense Structure as set forth in the Engagement Agreement, the terms of the Engagement Agreement shall control.

20. In addition, the Debtor will reimburse FTI for all reasonable allocated and direct expenses incurred in connection with the Services to be provided under the Engagement Agreement (including for FTI's reasonable and customary 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). 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 matter, FTI will be compensated at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

21. The Debtor submits that the Fee and Expense Structure is reasonable, market-based, and designed to compensate FTI fairly for its work and to cover fixed and routine overhead expenses. The Fee and Expense Structure appropriately reflects the nature of the services to be provided by FTI and the fee structures typically utilized by leading financial advisory firms of similar stature to FTI for comparable engagements, with respect to both in- and out-of-court restructurings. The Fee and Expense Structure is consistent with FTI's normal and customary billing practices for cases of this size and complexity and that require the level and scope of services outlined herein.

22. For the ninety (90) days prior to the Petition Date, FTI received payments and advances in the aggregate amount of \$2,142,597.88 for professional services performed and to be performed, including services related to the commencement and administration of the sale process and this chapter 11 case.

E. Reporting Requirements

23. If the Court grants the relief requested herein, FTI will be employed in this chapter 11 case pursuant to section 363 of the Bankruptcy Code. Because FTI is not being employed as a

professional under section 327 of the Bankruptcy Code, FTI will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. To maintain transparency and to comply with the U.S. Trustee's protocol applicable to the retention of personnel under section 363 of the Bankruptcy Code (sometimes referred to as the "J. Alix Protocol"), FTI, however, will file reports of compensation earned and expenses incurred on a quarterly basis (each a "Quarterly Report," and collectively, the "Quarterly Reports") with the Court and provide notice to the United States Trustee for the District of Utah ("U.S. Trustee"), counsel to the DIP Lender (as defined in the First Day Declaration), and counsel to any official committee of unsecured creditors appointed in this chapter 11 case (the "Committee", and collectively, the "Notice Parties"). Such reports will (a) summarize the services provided to the Debtor, (b) summarize the compensation earned by each of the FTI personnel, (c) identify the staff employee provided, and (d) itemize the expenses incurred. Notice for the Quarterly Reports will provide for a time period of at least fourteen (14) days for objections by parties in interest. For the avoidance of doubt, the CTO and the Additional Personnel will not be required to submit time entries in one-tenth of an hour increments but instead may submit time entries in one-hour increments.

24. Quarterly Reports shall be due no later than twenty (20) days after the end of a quarter with the first Quarterly Report, covering the period from the Petition Date through and including March 31, 2025, due on or before April 20, 2025. This procedure shall continue for any subsequent Quarterly Reports. In the event that a party in interest objects to a Quarterly Report, FTI's fees and expenses shall be subject to review by this Court.

25. In addition, FTI will file with the Court and provide the Notice Parties a report on staffing (the "Staffing Report") by the 20th of each month for the previous month. These Staffing Reports will include the names and tasks performed by all Additional Personnel involved in this

matter. Notice for the Staffing Reports will provide for a time period of at least fourteen (14) days for objections by parties in interest. The Staffing Report (and FTI's staffing for this matter) is subject to review by the Court in the event so requested by any of the Notice Parties.

F. No Duplication of Services

26. FTI is aware of the fact that the Debtor seeks to retain Ropes & Gray LLP and Ray Quinney & Nebeker PC, as its bankruptcy co-counsel, Houlihan Lokey Capital, Inc., as its investment banker, and Kroll Restructuring Administration, LLC, as its claims and noticing agent, and that the Debtor may retain additional professionals during the term of the engagement. FTI will work cooperatively with, and not duplicate the services of, the other professionals in order to integrate any respective work performed by FTI on behalf of the Debtor with the work performed by the other professionals.

G. Indemnification⁵

23. The Engagement Agreement contains standard indemnification language with respect to FTI's services including, without limitation, an agreement by the Debtor to indemnify FTI and its affiliates and their respective directors, officers, employees, attorneys and other agents appointed by any of the foregoing and each other person, if any, controlling FTI or any of its affiliates (each, an "Indemnified Person"), from and against any losses, claims, damages, judgments, assessments, costs and other liabilities and will reimburse each Indemnified Person for all reasonable fees and expenses (including the reasonable fees and expenses of counsel) as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or

⁵ This section is intended to be summary in nature. Parties are directed to the Engagement Agreement for the full terms of the Debtor's indemnification obligations. In the case of any conflict between this Motion and the Engagement Agreement, the Engagement Agreement shall control.

not any Indemnified Person is a party, in each case, related to or arising out of or in connection with the Services rendered or to be rendered by an Indemnified Person pursuant to the Engagement Agreement or any Indemnified Persons' actions or inactions in connection with any such Services (collectively, the "Indemnification Provisions"). The Debtor is not responsible for any of the foregoing to the extent that they are determined by a judgment of a court of competent jurisdiction, which judgment is no longer subject to appeal or further review, to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct in connection with any of the Services. In the event that any indemnification claim is brought by FTI against the Debtor during or as a result of this bankruptcy case, FTI will seek approval of any such claim in this Court.

24. The Debtor requests that with respect to FTI and any persons not serving in executive officer positions, this Court approve the Indemnification Provisions as set forth in the Engagement Agreement, subject during the pendency of the Debtor's chapter 11 case to the following modifications:

- a. Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtor, the Debtor is 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 Debtor 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, bad faith, 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, bad faith, 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 Debtor's chapter 11 case (that order having become a final order no longer

subject to appeal), and (ii) the entry of an order closing the chapter 11 case, FTI believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtor 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 Debtor's obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

25. The Indemnification Provisions are customary and reasonable for FTI and comparable firms providing financial advisory services. The terms and conditions of the Indemnification Provisions were fully negotiated between the Debtor and FTI at arm's length and in good faith. The Indemnifications Provisions, viewed in conjunction with the other terms of FTI's proposed retention, are reasonable and in the best interest of the Debtor, its estate, and creditors in light of the fact that the Debtor require FTI's services to successfully reorganize.

26. Notwithstanding the foregoing, FTI understands that the Indemnification Provisions shall apply only to such FTI employees not serving in executive officer positions and that the indemnification of any persons serving as executive officers shall be on the same terms as provided to the Debtor's other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtor's directors and officers insurance policy. The indemnification terms herein supersede and replace any provision of the Engagement Agreement related to the indemnification of any executive officers including, but not limited to, the applicable provisions of Section 6 of the Standard Terms and Conditions of the Engagement Agreement.

H. FTI's Disinterestedness

27. To the best of the Debtor's knowledge, information, and belief, except to the extent disclosed in the Boykin Declaration, FTI (a) is a "disinterested person" within the meaning of

section 101(14) of the Bankruptcy Code, (b) has no connection with the Debtor, its creditors, or other parties in interest, or the attorneys or accountants of the foregoing, or the U.S. Trustee or any person employed by the U.S. Trustee; and (c) does not hold any interest adverse to the Debtor's estate. As set forth in further detail in the Boykin Declaration, FTI has certain connections with creditors, equity security holders, and other parties in interest in this chapter 11 case. All of these matters, however, are unrelated to this chapter 11 case. FTI does not believe that any of these matters represent an interest materially adverse to the Debtor's estate or otherwise create a conflict of interest regarding the Debtor or this chapter 11 case.

28. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of FTI's retention are discovered or arise, FTI will file a supplemental declaration pursuant to Bankruptcy Rule 2014.

BASIS FOR RELIEF REQUESTED

29. The Debtor requests authority to retain FTI under the terms of the Engagement Agreement pursuant to section 363 of the Bankruptcy Code, which provides in pertinent part that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b). Courts interpreting section 363(b) have held that transactions should be approved pursuant to such provision where, as here, they are supported by management's sound business judgment. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.2d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (noting that the Third Circuit had adopted the "sound business purpose" test for section 363(b)).

30. Under the business judgment rule, a court will not interfere with the judgment of a board of directors unless there is a showing of “gross and palpable overreaching.” *In re Marvel Entm’t Group, Inc.*, 273 B.R. 58, 78 (Bankr. D. Del. 2002) (“under the business judgment rule, a board’s ‘decisions will not be disturbed if they can be attributed to any rational purpose’ and a court ‘will not substitute its own notions of what is or is not sound business judgment’”) (*citing Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 719–20 (Del. 1971)).

31. The retention of corporate officers is proper under section 363 of the Bankruptcy Code. Courts recognize the applicability of section 363(b) of the Bankruptcy Code to the use of estate property to compensate individuals employed outside the ordinary course of business. *See In re First Int’l Services Corp.*, 25 B.R. 66, 69 (Bankr. D. Conn. 1982). Indeed, courts have relied upon section 363(b) as the basis upon which to employ and compensate professionals to serve as officers or other management-level personnel employed by the debtors. *See, e.g., In re Spansion Inc.*, Case No. 0-10690 (KJC) (Bankr. D. Del. Apr. 13, 2009); *In re Verasun Energy Corp.*, Case No. 08-12687 (PJW) (Bankr. D. Del. Dec. 17, 2008); *In re WorldSpace, Inc.*, Case No. 08-12412 (KJC) (Bankr. D. Del. Nov. 10, 2008); *In re Hines Horticulture, Inc.*, Case No. 08-11922 (KJC) (Bankr. D. Del. October 2, 2008).

32. The Debtor submits that the retention and employment of FTI is a sound exercise of its business judgment pursuant to section 363 of the Bankruptcy Code, as FTI’s services are necessary and essential to the Debtor’s restructuring efforts. In addition to the specific knowledge Mr. Boyko and the Additional Personnel have acquired about the Debtor’s business, Mr. Boyko and the Additional Personnel also have extensive experience providing restructuring services to distressed companies. In essence, the Debtor is seeking to continue to employ FTI to advise and guide it through challenging times and to assist with the restructuring of the Debtor and the

prosecution of this chapter 11 case. Moreover, numerous bankruptcy courts have analyzed the propriety of a debtor's employment of corporate restructuring officers, advisors, and professionals under section 363 of the Bankruptcy Code on numerous occasions and have determined it is an appropriate exercise of the debtor's business judgment to employ a restructuring professional in this manner.

33. Denying the relief requested herein would deprive the Debtor of the assistance of a highly qualified CTO and disadvantage the Debtor and all parties in interest. Indeed, the Debtor would be forced to engage new restructuring advisors who lack a thorough understanding of the Debtor's business and the turnaround and restructuring strategy the Debtor implemented prior to the Petition Date. Further, hiring a new restructuring officer and new restructuring advisors would involve a steep learning curve, significant time, and additional resources—all of which are in short supply given the brief timeframe within which the Debtor seeks to effect a sale of substantially all of its assets, as described in the First Day Declaration. Accordingly, the Debtor respectfully submits that the services provided by FTI and Mr. Boyko are critical to this chapter 11 case and request that the Court approve the Engagement Agreement in substantially the form attached hereto.

34. The Debtor has determined, in the exercise of its business judgment, that the fee structure set forth in the Engagement Agreement appropriately reflects the nature of the services to be provided by FTI, contains reasonable terms and conditions of employment, and should be approved under section 363 of the Bankruptcy Code. Additionally, the Debtor submits that the employment of FTI as CTO is consistent with the "Jay Alix Protocol" established by the U.S. Trustee.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(h)

35. The Debtor respectfully requests a waiver of the fourteen (14) day stay of effectiveness imposed by Bankruptcy Rule 6004(h) so that the relief requested herein can take effect immediately upon entry of an order approving this Motion.

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

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 9, 2024.

Respectfully submitted,

RAY QUINNEY & NEBEKER P.C.

By: /s/ Michael R. Johnson

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*Proposed Counsel to the Debtor and
Debtor in Possession*

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2024, the foregoing document was filed with the Clerk of the Court in the foregoing Chapter 11 case using the CM/ECF filing system, which sent notice of electronic filing to all electronic filing users in the case.

/s/ Michael R. Johnson

Michael R. Johnson

EXHIBIT A

Boyko Declaration

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**DECLARATION OF ALAN BOYKO IN SUPPORT OF DEBTOR'S MOTION FOR AN
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CODE, AUTHORIZING DEBTOR TO RETAIN FTI CONSULTING, INC.,
DESIGNATING ALAN BOYKO AS CHIEF TRANSFORMATION OFFICER FOR THE
DEBTOR EFFECTIVE AS OF THE PETITION DATE, AND APPROVING THE
ENGAGEMENT AGREEMENT RELATED THERETO**

Pursuant to 28 U.S.C. § 1746, Alan Boyko declares as follows:

1. I am a Senior Managing Director at FTI Consulting, Inc. (“FTI”), an international consulting firm, with numerous offices throughout the country.

2. I am authorized to make this declaration (the “Declaration”) on behalf of FTI and in support of the in support of the *Debtor’s Motion for an Order, Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code, Authorizing the Debtor to Retain FTI Consulting Inc., Designating Alan Boyko as Chief Transformation Officer for the Debtor Effective As of the Petition Date, and Approving the Engagement Agreement Related Thereto* (the “Motion”).¹ Except as otherwise noted, I have personal knowledge of the matters set forth herein or have been informed of the matters set forth herein by other professionals at FTI.

FTI’s Qualifications

3. FTI’s practice consists of senior financial, management consulting, and other professionals who specialize in providing financial, business, and strategic assistance typically in distressed business settings. FTI’s debtor advisory services include a wide range of activities targeted at stabilizing and improving a company’s financial position. FTI’s expertise relevant to the chapter 11 case includes: (a) turnaround and restructuring consulting; (b) interim management, including serving in executive and management roles; (c) managing communications with lenders, board members, employees, investors, and creditor constituencies, (d) strategic business plan development; (e) refinancing and restructuring of debt; (f) marketing, management, and administration of asset disposition; (g) cash management and liquidity enhancement; (h) operational improvement; and (i) bankruptcy services.

¹ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Motion.

4. In addition, FTI and its professionals have assisted and advised numerous financially troubled companies from a variety of industries in complex financial restructurings and liquidations, both out of court and in chapter 11 cases. FTI professionals have been retained in numerous large, complex chapter cases, including, among others: *In re LaVie Care Centers, LLC, et al.*, No. 24-55507 (PMB) (Bankr. N.D. Ga. 2024); *Pipeline Health System, LLC*, No. 22-90291 (MI) (Bankr. S.D. Tx. 2022); *In re GBG USA Inc.*, No. 21-11368 (MEW) (Bankr. S.D.N.Y. 2021); *In re Rental Car Intermediate Holdings, LLC*, No. 20-11247 (MFW) (Bankr. D. Del. 2022); *In re Brooks Brothers Group, Inc., et al.*, No. 20-11785 (CSS) (Bankr. D. Del. 2020); *In re Westinghouse Electric Co.*, No. 17-10751 (MEW) (Bankr. S.D.N.Y. 2017).

5. I am a Senior Managing Director of FTI, with whom I have worked since 2006. I began serving as one of the Debtor's transformation officers on November 15, 2023. On June 3, 2024, the Debtor appointed me as its sole CTO to facilitate ongoing operations and financial matters and, ultimately, to prepare the Debtor for this chapter 11 proceeding and proposed sale. I have more than twenty (20) years of experience in providing financial advisory, interim management, liquidity management and restructuring services to corporations and various creditor classes of underperforming companies. My extensive experience spans industries such as mining, manufacturing, automotive, financial services, real estate, healthcare, and food and beverage. Outside my work with the Debtor, my recent notable experience includes serving as a financial advisor to an international outdoor retail company, leading to significant working capital improvements.

6. I have led and managed a wide range of engagements ranging from very small companies to multibillion-dollar companies, and in these advisory roles, provided services including the development of contract and product profitability models and analysis; revamped

monthly financial planning and analysis reporting templates and dashboards; the development and implementation of cost savings plans; financial modeling of segment-level financial performance; and cost-benefit of analysis of proposed strategic initiatives.

7. I have earned numerous awards and accolades throughout my career, including being recognized as a Top Emerging Leader by *The M&A Advisor* and as one of the Top 50 Rising Star Dealmakers by Global M&A Network. As a seasoned restructuring professional, I have guided distressed companies through a wide range of complex financial, operational, and strategic challenges. My notable roles include serving as Chief Restructuring Officer (CRO) for Armstrong Energy, successfully leading the business through its sale to Murray Energy; acting as Chief Restructuring Financial Advisor (CRFO) for White Stallion Energy during its restructuring process; and serving as Plan Administrator for AFA Foods.

8. In providing prepetition professional services to the Debtor, FTI and I have become familiar with the Debtor and its businesses, including the Debtor's financial affairs, debt structure, operations, and related matters. Having worked closely with the Debtor's management and its other advisors, FTI and I have developed relevant experience and expertise regarding the Debtor that will assist us in providing effective and efficient services in this chapter 11 case. Accordingly, FTI and I are both well-qualified and uniquely able to represent the Debtor in this chapter 11 case in an efficient and timely manner.

Services to be Provided

9. The terms and conditions of the Engagement Agreement were negotiated between the Debtor and FTI and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Subject to the Court's approval, the Debtor anticipates that FTI will perform the following financial advisory services (collectively, the "Services"), among others,

pursuant to the terms and provisions of the Engagement Agreement, as necessary and appropriate, and as mutually agreed upon by FTI and the Debtor:²

- a. Assist the Company, Vobev's senior management and its other advisors to revise and update its 2025 business plan and forecasted financial performance;
- b. As directed by the Independent Committee, lead management of and ongoing reporting requirements to the senior secured lender and its advisors;
- c. Assist the Company and its advisors, when requested, in the preparation, design, and presentation of proposals to creditors and investors regarding terms of potential amendments, capital raising initiatives, modifications, and/or a sales process;
- d. Assist the Company and its other advisors, only if directed by the Independent Committee, in the preparation of additional strategic options for the business;
- e. Provide periodic status reports to senior management, the Company's Board of Directors, and the other advisors with respect to the progress of the overall engagement, as requested; and,
- f. Perform other customary financial and strategic advisory services as may be reasonably requested by the Company, and as may be customary in this type of engagement.

10. During the Debtor's chapter 11 case, the Services also will include, but not be limited to:

- a. Assistance with the preparation of financial related disclosures required by the Court, including the Schedules of Assets and Liabilities, the Statement of Financial Affairs, and Monthly Operating Reports;
- b. Assistance with the identification and implementation of short-term cash management procedures;
- c. Assistance and advice with respect to the identification of core business assets and the disposition of assets or liquidation of unprofitable operations;

² The summaries of the Engagement Agreement contained in this Motion are provided for purposes of convenience only. In the event of any inconsistency between the summaries contained herein and the terms and provisions of the Engagement Agreement, the terms of the Engagement Agreement shall control.

- d. Assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;
- e. Assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Court approval is sought;
- f. Attendance at meetings and assistance in discussions with potential investors, banks, the Debtor's prepetition debt holders, the Committee and any other official committee appointed in this chapter 11 case, the U.S. Trustee, and other parties in interest and professionals hired by the same, as requested;
- g. Analysis of creditor claims by type, entity and individual claim, including assistance with development of databases, as necessary, to track such claims;
- h. Assistance in the preparation of information and analysis necessary for the confirmation of a plan in this chapter 11 case; and
- i. Such other general business consulting or other assistance as Debtor's management or counsel may deem necessary that are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this chapter 11 case.

11. I understand that such Services are necessary to the Debtor's efforts to conduct an orderly reorganization in this chapter 11 case. If necessary, the individuals working on this matter will be assisted by or replaced by various professionals at various levels.

12. The Services provided by FTI will complement, and not duplicate, the services to be rendered by any other professional retained in this chapter 11 case.

Professional Compensation

13. As set forth more fully in the Engagement Agreement, the following fee and expense structure (the "Fee and Expense Structure") for FTI's engagement is as follows: The Debtor will compensate FTI at the rate of \$500,000 per month, with this rate effective as of

December 1, 2024. The final month of fixed fees will be prorated through the earliest to occur of (i) the effective date of a plan, (ii) dismissal of any chapter 11 filing, or (iii) conversion of any chapter 11 filing should that date not coincide with a month-end. Any time billed subsequent to that date will be billed at the hourly rates below unless otherwise negotiated between the parties. Fees will be billed monthly and are due within five (5) business days of invoice receipt.³

Professional Level	Rates per Hour
Senior Managing Director	\$1,185 - \$1,525
Directors/ Senior Directors/ Managing Director	\$890 - \$1,155
Consultants/ Senior Consultants	\$485 - \$820
Paraprofessionals	\$190 - \$385

14. In addition, the Debtor will reimburse FTI for all reasonable allocated and direct expenses incurred in connection with the Services to be provided under the Engagement Agreement (including for FTI's reasonable and customary 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). 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 matter, FTI will be compensated at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

15. If the Court grants the relief requested herein, FTI will be employed in this chapter 11 case pursuant to section 363 of the Bankruptcy Code. Because FTI is not being employed as a professional under section 327 of the Bankruptcy Code, FTI will not be required to submit fee

³ To the extent there is any inconsistency between the summary of the Fee and Expense Structure set forth in this Motion and the Fee and Expense Structure as set forth in the Engagement Agreement, the terms of the Engagement Agreement shall control.

applications pursuant to sections 330 and 331 of the Bankruptcy Code. To maintain transparency and to comply with the U.S. Trustee's protocol applicable to the retention of personnel under section 363 of the Bankruptcy Code (sometimes referred to as the "J. Alix Protocol"), FTI, however, will file reports of compensation earned and expenses incurred on a quarterly basis (each a "Quarterly Report," and collectively, the "Quarterly Reports") with the Court and provide notice to the United States Trustee for the District of Utah ("U.S. Trustee"), counsel to the DIP Lender (as defined in the First Day Declaration), and counsel to any official committee of unsecured creditors appointed in this chapter 11 case (the "Committee", and collectively, the "Notice Parties"). Such reports will (a) summarize the services provided to the Debtor, (b) summarize the compensation earned by each of the FTI personnel, (c) identify the staff employee provided, and (d) itemize the expenses incurred. Notice for the Quarterly Reports will provide for a time period of at least fourteen (14) days for objections by parties in interest. For the avoidance of doubt, the CTO and the Additional Personnel will not be required to submit time entries in tenth of an hour increments but instead may submit time entries in one-hour increments.

16. Quarterly Reports shall be due no later than twenty (20) days after the end of a quarter with the first Quarterly Report, covering the period from the Petition Date through March 31, 2025, due on or before April 20, 2025. This procedure shall continue for any subsequent Quarterly Reports. In the event that a party in interest objects to a Quarterly Report, FTI's fees and expenses shall be subject to review by this Court.

17. In addition, FTI will file with the Court and provide the Notice Parties a report on staffing (the "Staffing Report") by the 20th of each month for the previous month. These Staffing Reports will include the names and tasks performed by all Additional Personnel involved in this matter. Notice for the Staffing Reports will provide for a time period of at least fourteen (14) days

for objections by parties in interest. The Staffing Report (and FTI's staffing for this matter) is subject to review by the Court in the event so requested by any of the Notice Parties.

18. The hourly rates that FTI proposes to charge in this chapter 11 case are FTI's hourly rates currently in effect and are similar to the rates FTI generally charges for special situations, restructuring, workout, bankruptcy, insolvency, and comparable matters whether in court or otherwise, regardless of whether a fee application is required, and to rates that comparable advisors would charge to perform work in such matters.

19. I believe that the Fee and Expense Structure is reasonable, market-based, and designed to compensate FTI fairly for its work and to cover fixed and routine overhead expenses. The Fee and Expense Structure appropriately reflects the nature of the services to be provided by FTI and the fee structures typically utilized by leading financial advisory firms of similar stature to FTI for comparable engagements, with respect to both in- and out-of-court restructurings. The Fee and Expense Structure is consistent with FTI's normal and customary billing practices for cases of this size and complexity and that require the level and scope of services outlined herein.

20. For the ninety (90) days prior to the Petition Date, FTI received payments and advances in the aggregate amount of \$2,142,597.88 for professional services performed and to be performed, including services related to the commencement and administration of the Sale Process and this chapter 11 case.

Indemnification

21. The Engagement Agreement contains standard indemnification language with respect to FTI's services including, without limitation, an agreement by the Debtor to indemnify FTI and its affiliates and their respective directors, officers, employees, attorneys and other agents appointed by any of the foregoing and each other person, if any, controlling FTI or any of its affiliates (each, an "Indemnified Person"), from and against any losses, claims, damages,

judgments, assessments, costs and other liabilities and will reimburse each Indemnified Person for all reasonable fees and expenses (including the reasonable fees and expenses of counsel) as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or not any Indemnified Person is a party, in each case, related to or arising out of or in connection with the Services rendered or to be rendered by an Indemnified Person pursuant to the Engagement Agreement or any Indemnified Persons' actions or inactions in connection with any such Services (collectively, the "Indemnification Provisions"). The Debtor is not responsible for any of the foregoing to the extent that they are determined by a judgment of a court of competent jurisdiction, which judgment is no longer subject to appeal or further review, to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct in connection with any of the Services. In the event that any indemnification claim is brought by FTI against the Debtor during or as a result of this bankruptcy case, FTI will seek approval of any such claim in this Court.

22. The Debtor requests that with respect to FTI and any persons not serving in executive officer positions, this Court approve the Indemnification Provisions as set forth in the Engagement Agreement, subject during the pendency of the Debtor's chapter 11 case to the following modifications:

- a. Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtor, the Debtor is 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 Debtor 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, bad faith, 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, bad faith, 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 Debtor's chapter 11 case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the chapter 11 case, FTI believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtor 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 Debtor's obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

23. The Indemnification Provisions are customary and reasonable for FTI and comparable firms providing financial advisory services. The terms and conditions of the Indemnification Provisions were fully negotiated between the Debtor and FTI at arm's length and in good faith. The Indemnifications Provisions, viewed in conjunction with the other terms of FTI's proposed retention, are reasonable and in the best interest of the Debtor, its estate, and creditors in light of the fact that the Debtor requires FTI's services to successfully reorganize.

24. Notwithstanding the foregoing, FTI understands that the Indemnification Provisions shall apply only to such FTI employees not serving in executive officer positions and that the indemnification of any persons serving as executive officers shall be on the same terms as provided to the Debtor's other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtor's directors and officers insurance policy. The indemnification terms herein supersede and replace any provision of the Engagement Agreement related to the indemnification of any executive officers including, but not limited to,

the applicable provisions of Section 6 of the Standard Terms and Conditions of the Engagement Agreement.

FTI's Disinterestedness

25. In connection with the preparation of this Declaration, FTI conducted a review of its contacts with the Debtor, its affiliates, and certain entities holding large claims against or interests in the Debtor that were made reasonably known to FTI. A listing of the parties reviewed is reflected on **Schedule 1** to this Declaration. FTI's review, completed under my supervision, consisted of a query of the Schedule 1 parties within an internal computer database⁴ containing names of individuals and entities that are present or recent former clients of FTI. A summary of such relationships that FTI identified during this process is set forth on **Schedule 2** to this Declaration.

26. Based on the results of its review, FTI does not have a relationship with any of the parties on **Schedule 1** in matters related to the Debtor or these proceedings. FTI has provided and could reasonably be expected to continue to provide services unrelated to the Debtor's case for the various entities shown on **Schedule 2**. FTI's assistance to these parties has been related to providing various financial restructuring, litigation support, technology, strategic communications, and economic consulting services. To the best of my knowledge and except as otherwise disclosed herein, no services have been provided to these parties in interest that involve their rights in the Debtor's case, nor does FTI's involvement in this case compromise its ability to continue such consulting services.

27. As part of its diverse practices, FTI appears in numerous cases, proceedings, and transactions that involve many different professionals, including attorneys, accountants, and

⁴ For the avoidance of doubt, FTI's computer database covers FTI Consulting, Inc. and its wholly-owned subsidiaries globally.

financial consultants, who may represent claimants and parties in interest in the Debtor's chapter 11 case. Also, FTI has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in these proceedings. In addition, FTI has in the past, may currently, and will likely in the future be working with or against other professionals involved in the chapter 11 case in matters unrelated to the Debtor and this case. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests adverse to the Debtor in matters upon which FTI is to be employed and none are in connection with the Debtor's chapter 11 case.

28. FTI is not a "creditor" of the Debtor within the meaning of section 101(1) of the Bankruptcy Code. Further, neither I, FTI, nor any other of the FTI Professionals serving the Debtor, to the best of my knowledge, (a) is a creditor, equity security holder, or insider of the Debtor; (b) except with respect to the prepetition officer role described herein, is or has been within two years before the Petition Date, a director, officer, or the Debtor; or (c) has any interest materially adverse to the interest of the Debtor's estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason. As such, to the best of my knowledge and based upon the results of the relationship search described above and disclosed herein, FTI (i) is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code and (ii) neither holds nor represents an interest adverse to the Debtor or its estate. Therefore, FTI believes it is eligible to be employed by the Debtor under section 363(b) of the Bankruptcy Code.

29. It is FTI's policy and intent to update and expand its ongoing relationship search for additional parties in interest in an expedient manner. If any new material relevant facts or

relationships are discovered or arise, FTI will file a supplemental declaration pursuant to Bankruptcy Rule 2014.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: December 9, 2024

/s/ Alan Boyko

Alan Boyko
Senior Managing Director
FTI Consulting, Inc.

Schedule 1

Debtor and Known Affiliates (Including Joint Ventures)

BVO Holdings Corporation
VBEV, LLC
VO2021 LLC
Vobev Holdings LLC
Vobev, LLC

Debtor's Restructuring Professionals

Ray Quinney & Nebeker P.C.
Houlihan Lokey, Inc.
Ropes & Gray LLP

Restructuring Professionals for Lenders, Trustees, Agents, and Other Secured Parties

Proskauer Rose LLP

Ordinary Course Professionals

Christensen & Jensen, P.C.
Neil Skousen, Attorney
UB Greensfelder LLP

Lenders, Trustees, Agents, and Other Secured Parties

ACF FINCO I LP
Ares Capital Corporation

Debtor's Banks

BMO Harris Bank N.A.

Current and Former Directors and Officers

Bill Vogel
Andy Pretty
Brian Belot
DeLynne Siggaard
Jeff Goodell
Mike Sowieja
Toni Ure
Torben Siggaard
Dennis Christensen
John Sacksteder

Significant Equity Holders

BVO Holdings Corporation
VO2021 LLC

Parties to Pending Litigation

BetterCans, LLC
Container Manufacturing LTD.
Crown Equipment Corporation d/b/a/ Crown Lift Trucks

Landlords

EXETER 150 SOUTH 5600 WEST, LLC
HRDC OWNER LLC

Material Vendors & Contract Counterparties

Arizona Beverages USA, LLC
Q Tonic, LLC
Tri-Arrows Aluminum, Inc.
VNGR Beverage, LLC O/A Poppi
Woodbolt Distribution, LLC d/b/a Nutrabolt

Top Unsecured Creditors

A.T. Kearney
Alden Group Environmental Solutions, LLC
Belvac Production Machinery, Inc.
BetterCans, LLC
BVO Holdings Corporation
Container Manufacturing Ltd.
Cravath, Swaine & Moore LLP
Crown Lift Trucks
Danisco USA Inc (IFF)
Evercore Group LLC
Fifth Nutrisupply Inc
GSL Electric
HOJ Innovations, LLC
Integrity Express Logistics, LLC (IEL)
Krones Inc.
Les Olson Company
N2 Advantage Law, Ltd.
Nutrabolt
NutriScience Innovations, LLC
Orbis
Pallets of Utah Inc
PanaSource Ingredients Inc
PCA - Packaging Corporation of America
PPG Industries, Inc
Pride Transport
Prinova
Rocky Mountain Power
Roeslein & Associates, Inc.
Salt Lake City Public Utilities

Salt Lake County Assessor
Sherwin-Williams / Valspar
Signode (Angleboard) - Tier Sheets
Stolle Europe Ltd.
Stolle Machinery Co., LLC
System Logistics Technology
Tri-Arrows Aluminum, Inc.
Utah Paperbox (UPB)
Vojet Aviation, LLC
VoMKE, LLC

Taxing Authorities

Alcohol & Tobacco Tax and Trade Bureau
Department of Environmental Quality
Department of Treasury - Alcohol and Tobacco Tax
Internal Revenue Service - Department of Treasury
Salt Lake City Corporation
Salt Lake County Assessor
State of Utah Department of Alcoholic Beverage Control
Streamlined Sales Tax Governing Board Inc
US Customs - Expeditors International of WA Inc. Agency
UT State Tax Commission - Division Motor Vehicles

Insurance Providers and Benefits Administrators

Admin America, Inc
Allied Administrators for Delta Dental
Chubb
Cigna Healthcare
Marsh & McLennan Agency LLC
Mutual of Omaha

Major Customers

Arizona Beverages USA
Aura Bora, Inc.
BUM Energy, LLC
Digican
EHPlabs LLC
Envy Brands Inc.
Keurig Dr Pepper Inc.
Muse Organic LLC
Nolet Distillery B.V.
Oodles of Doodles Beverages
Pop & Bottle Inc.
Q Tonic, LLC
ROLUS Beverages, Inc.
Saxco International LLC

The Wine Group LLC
VNGR Beverage, LLC O/A Poppi
Western Beef Inc.
Westrock Coffee Company, LLC
Woodbolt Distribution, LLC d/b/a Nutrabolt

Utility Providers

Enbridge Gas UT WY ID
FirstDigital
Republic Services, Inc.
Rocky Mountain Power
Salt Lake City Public Utilities
Summit Energy, LLC
Summit Technology
Wasatch Regional Landfill

Judges for the District of Utah

Kevin R. Anderson
Joel T. Marker
Peggy Hunt
William T. Thurman

U.S. Trustee Personnel, Judges and Staff for the District of Utah

Michael Coffman
Ross Rankin
Sarah Laybourne
David Sime
Gary Gfeller
Janene Turner
Jessica Trousdale
David W. Newman
Matthew Burne
Aaron Carson
Brittany Dewitt
James Gee
Rachelle Hughes
Lindsey Huston
Peter Kuhn
Rinehart Peshell
Melinda Willden
Maryn Richmond
Shannon Robinson
Jonathan Shapiro

Significant Competitors

Ardagh Group

Ball Corporation
Brooklyn Bottling Group
Crown Holdings
G3 Enterprises, Inc
The Portland Bottling Company

Other Interested Parties¹

[REDACTED]

¹ The identities of the Other Interested Parties is confidential; however, FTI will provide the parties' names to the U.S. Trustee and the Court in camera upon request.

Schedule 2

Disclosures

CURRENT CLIENTS

Ares Capital Corporation
BMO Harris Bank N.A.
Chubb
Cigna Healthcare
Cravath, Swaine & Moore LLP
Crown Equipment Corporation d/b/a Crown Lift Trucks
Crown Holdings
Crown Lift Trucks
Evercore Group LLC
Houlihan Lokey, Inc.
Nutrabolt
PPG Industries, Inc
Prinova
Proskauer Rose LLP
Republic Services, Inc.
Ropes & Gray LLP
Sherwin-Williams / Valspar
UB Greensfelder LLP
Vobev, LLC
Citibank NA
Travelers Casualty and Surety Company of America

FORMER CLIENTS

Ball Corporation
Orbis

EXHIBIT B

Proposed Form of Order

Prepared and Submitted by:

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David H. Leigh (9433)
Mel Jones-Cannon (19286)
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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**ORDER APPROVING DEBTOR’S MOTION FOR AN ORDER,
PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY
CODE, AUTHORIZING DEBTOR TO RETAIN FTI CONSULTING, INC.,
DESIGNATING ALAN BOYKO AS CHIEF TRANSFORMATION
OFFICER FOR THE DEBTOR EFFECTIVE AS OF THE PETITION
DATE, AND APPROVING THE ENGAGEMENT AGREEMENT RELATED THERETO**

Upon consideration of the motion (the “Motion”)¹ of the Debtor for entry of an order (the “Order”), pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, (i) authorizing the Debtor to retain and employ FTI to provide Alan Boyko to serve as CTO in connection with the chapter 11 case, effective as of the Petition Date; and (ii) approving the Engagement Agreement, attached hereto as **Exhibit 1**; and upon consideration of the Boyko Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtor’s estate, its creditors and other parties-in-interest; and the Court being satisfied that FTI does not hold or represent any entity having an interest adverse to the interests of the Debtor’s estate or of any class of creditors or equity security holders and does not have any conflict of interest or materially adverse interest to the Debtor; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

¹ Capitalized terms used herein as defined terms and not otherwise defined shall have those meanings ascribed to them in the Motion.

1. The Motion is GRANTED, as provided herein.
2. The Debtor is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to (a) employ FTI; (b) designate Alan Boyko to serve as CTO of the Debtor; and (c) utilize FTI's Additional Personnel to provide the Services in accordance with the terms and conditions set forth in the Engagement Agreement, as modified herein, effective as of the Petition Date.
3. The Debtor's employment of FTI is subject to the following terms that apply notwithstanding anything in the Motion or the Engagement Agreement to the contrary:
 - a. FTI and its affiliates shall not act in any other capacity (for example, and without limitation, as a claims agent/claims administrator, or investor/acquirer) in connection with this chapter 11 case.
 - b. In the event the Debtor seeks to have the FTI Professionals assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (i) modifying the functions of personnel, (ii) adding new personnel, or (iii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.
 - c. FTI shall file with the Court, with copies to the U.S. Trustee, counsel to the DIP Agent and DIP Lenders (each, as defined in First Day Declaration), and counsel to the official committee of unsecured creditors (the "Committee") appointed in this chapter 11 case (together, the "Notice Parties"), a monthly report of staffing on the engagement for the previous month (the "Staffing Reports"). The Staffing Reports shall include the names and functions filled of the Additional Personnel, including any independent contractors assigned, and shall be due by the 20th of each month for the previous month. To the extent that FTI employs an independent contractor or an affiliate of FTI to provide services in connection with this engagement, such employment must be disclosed. Notice for the Staffing Reports will provide for a time period of at least fourteen (14) days for objections by parties in interest. All staffing shall be subject to review by the Court in the event an objection is filed.
 - d. FTI will file reports of compensation earned and expenses incurred on a quarterly basis (each a "Quarterly Report," and collectively, the "Quarterly Reports") with the Court and provide notice to the United States Trustee for the District of Utah ("U.S. Trustee"), counsel to the DIP Agent and the DIP

Lenders (each, as defined in the First Day Declaration), and counsel to any official committee of unsecured creditors appointed in this chapter 11 case (the “Committee”, and collectively, the “Notice Parties”). Such reports will (a) summarize the services provided to the Debtor, (b) summarize the compensation earned by each of the FTI personnel, (c) identify the staff employee provided, and (d) itemize the expenses incurred. Notice for the Quarterly Reports will provide for a time period of at least fourteen (14) days for objections by parties in interest. For the avoidance of doubt, the CTO and the Additional Personnel will not be required to submit time entries in one-tenth of an hour increments but instead may submit time entries in one-hour increments.

- e. Quarterly Reports shall be due no later than twenty (20) days after the end of a quarter with the first Quarterly Report, covering the period from the Petition Date through and including March 31, 2025, due on or before April 20, 2025. This procedure shall continue for any subsequent Quarterly Reports. In the event that a party in interest objects to a Quarterly Report, FTI’s fees and expenses shall be subject to review by this Court.
- f. Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the chapter 11 case on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee, or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.
- g. No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of the Debtor during the pendency of this chapter 11 case
- h. Notwithstanding any provision to the contrary in the Engagement Agreement, the Debtor is permitted (i) to indemnify those persons acting as executive officers only on the same terms as provided to the Debtor’s other officers and directors under the corporate bylaws and applicable state law; and (ii) to provide insurance coverage under the Debtor’s director and officer insurance policies to FTI and its personnel.
- i. There shall be no indemnification of FTI or its affiliates, except as may be provided for in this Order.
- j. 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 Debtor or the reorganized Debtor.
- k. FTI shall disclose any and all facts that may have a bearing on whether the firm, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtor, its creditors, or other parties

in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

1. Any independent contractor or affiliate of FTI employed in connection with the engagement shall disclose any and all facts that may have a bearing on whether such independent contractor or affiliate of FTI, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtor, its creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

4. All compensation and reimbursement due to, and other rights of FTI and Mr. Boyko in accordance with the Engagement Agreement, as modified by this Order, including, without limitation, the indemnification obligations, shall be treated and allowed (subject to the compensation review procedures identified herein) as administrative expenses in accordance with Bankruptcy Code section 503 and shall be paid in accordance with the Engagement Agreement.

5. FTI shall provide ten (10) days' notice to the Debtor, the U.S. Trustee, the DIP Agent and any statutory committee before any increases in the hourly rates set forth in the Motion or the Engagement Agreement are charged to the Debtor. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

6. Notwithstanding any provision to the contrary in the Engagement Agreement, FTI shall be deemed to have waived, and shall not raise or assert any defense, based upon jurisdiction, venue, abstention, or otherwise to the jurisdiction and venue of this Court or (if the reference is withdrawn) the United States District Court for the District of Utah to hear or determine any controversy or claims with respect to, in connection with, arising out of, or in any way related to FTI's engagement in the chapter 11 case.

7. With respect to controversies or claims arising out of or in any way related to the services in the Engagement Agreement, notwithstanding any arbitration, dispute resolution, or exclusive jurisdiction provisions contained in the Engagement Agreement, any disputes arising under the Engagement Agreement shall be heard in this Court during the pendency of this chapter 11 case.

8. Notwithstanding any provision to the contrary in the Engagement Agreement, the Limitation of Liability and Exculpation provisions in the Engagement Agreement shall not be enforceable during this chapter 11 case.

9. The Engagement Agreement's Indemnification Provisions are approved and subject to the following during the pendency of this case:

- a. Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtor, the Debtor is 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 Debtor 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, bad faith, 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, bad faith, 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 Debtor's chapter 11 case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the chapter 11 case, FTI believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtor 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 Debtor's obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

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

11. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

12. To the extent that there may be any inconsistency between the terms of the Motion, the Engagement Agreement, and this Order, the terms of this Order shall govern.

13. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization obtained, hereunder shall be subject to the requirements imposed on the Debtor under any approved debtor-in-possession financing facility or any order regarding the use of cash collateral approved by the Court in this chapter 11 case, including, without limitation, the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Order"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the DIP Order and the Approved Budget (as defined in the DIP Order) shall control. For the avoidance of doubt, the Debtor is not authorized to make payments pursuant to this Order except as permitted by the Approved Budget (as defined in the DIP Order).

14. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

EXHIBIT 1

Engagement Agreement



Alan Boyko
FTI Consulting, Inc.
999 17th Street, Suite 700
Denver, CO 80202
1 (574) 309-1795
Alan.Boyko@fticonsulting.com

CONFIDENTIAL

November 25, 2024

Alan Carr, Esq.
Vobev, LLC
5454 W 150 S
Salt Lake City, UT 84104

Re: Vobev Interim Management

Dear Mr. Carr:

The purpose of this letter is to confirm the understanding and agreement (the "Agreement") between Vobev, LLC, and VBev, LLC (collectively, the "Client", "Vobev", or the "Company"), on the one hand and FTI Consulting, Inc. ("FTI"), on the other hand, concerning the Client's engagement of FTI to provide certain temporary employees to the Client for advisory and transformation services (the "Services") in connection with Vobev. This Agreement is effective on the date signed (the "Effective Date"). The FTI Standard Terms and Conditions attached hereto as Exhibit "A" are also incorporated herein and forms part of this Agreement.

1. Temporary Officers, Hourly Temporary Employees and Services

FTI will provide Alan Boyko to serve as the Client's Chief Transformation Officer (the "CTO" or the "Temporary Officer") reporting to the independent committee of the Vobev, LLC Board (the "Independent Committee") in connection with the Engagement. The Temporary Officer, as well as any additional Temporary Staff, (as defined below), shall have such duties as the Independent Committee may from time to time determine, and shall at all times report to and be subject to supervision by the Independent Committee. Without limiting the foregoing, the Temporary Officer, as well as any Temporary Staff, shall work with other senior management of the Client, and other professionals, to provide the Services.

In addition to providing the Temporary Officer, FTI may also provide the Client with additional staff (the "Temporary Staff" and, together with the Temporary Officers, the "FTI Professionals"), subject to the terms and conditions of this Agreement. The Temporary Staff may be assisted by or replaced by other FTI professionals, as required, who shall also become Temporary Staff for purposes hereof. FTI will keep the Independent Committee reasonably informed as to FTI's staffing.

The scope of services, to be performed at your direction, are expected to include:

- Assist the Company, Vobev's senior management and its other advisors to revise and update its 2025 business plan and forecasted financial performance
- As directed by the Independent Committee, lead management of and ongoing reporting requirements to the senior secured lender and its advisors;

- Assist the Company and its advisors, when requested, in the preparation, design, and presentation of proposals to creditors and investors regarding terms of potential amendments, capital raising initiatives, modifications, and/or a sales process;
- Assist the Company and its other advisors, only if directed by the Independent Committee, in the preparation of additional strategic options for the business;
- Provide periodic status reports to senior management, the Company's Board of Directors, and the other advisors with respect to the progress of the overall engagement, as requested; and,
- Perform other customary financial and strategic advisory services as may be reasonably requested by the Company, and as may be customary in this type of engagement.

In the event that the Company commences chapter 11 cases, the Services will also be expected to include, but not be limited to:

- Assistance with the preparation of financial related disclosures required by the Court, including the Schedules of Assets and Liabilities, the Statement of Financial Affairs and Monthly Operating Reports;
- Assistance with the identification and implementation of short-term cash management procedures;
- Assistance and advice with respect to the identification of core business assets and the disposition of assets or liquidation of unprofitable operations;
- Assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;
- Assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Court approval is sought;
- Attendance at meetings and assistance in discussions with potential investors, banks, the Debtor's prepetition debt holders, the Committee and any other official committee appointed in this Chapter 11 Case, the U.S. Trustee, and other parties in interest and professionals hired by the same, as requested;
- Analysis of creditor claims by type, entity and individual claim, including assistance with development of databases, as necessary, to track such claims;
- Assistance in the preparation of information and analysis necessary for the confirmation of a plan in this Chapter 11 Case; and
- Such other general business consulting or other assistance as Debtor's management or counsel may deem necessary that are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this Chapter 11 Case.

The services we will provide in connection with the Engagement will encompass all services normally and reasonably associated with this type of engagement that we are requested and are able to provide and that are consistent with our ethical obligations. With respect to all matters of our Engagement, we will coordinate closely with the Company as to the nature of the services that we will render and the scope of our engagement.

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

The engagement of FTI to perform the Services shall be subject to the approval of the Bankruptcy Court and shall be substantially 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 *nunc pro tunc* to the Effective Date pursuant to § 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.

The Services do not include (i) audit, legal, tax, environmental, accounting, actuarial, employee benefits, 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, including valuation or securities analysis, including advising any party or representation of the Client on 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 its duties hereunder.

2. Compensation to FTI

For services rendered by the CTO and Temporary Staff, beginning December 1, FTI will be compensated at the rate of \$500,000 per month. In the event of a chapter 11 filing, the final month of fixed fees will be prorated through the earliest to occur of (i) the effective date of a plan, (ii) dismissal of any chapter 11 filing, or (iii) conversion of any chapter 11 filing should that date not coincide with a month-end. Any time billed subsequent to that date will be billed at the hourly rates below unless otherwise negotiated between the parties. Fees will be billed monthly and are due within 5 business days of invoice receipt.

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
Administrative / Paraprofessionals	190 – 385

In addition to the fees outlined above, FTI will bill for reasonable allocated and direct expenses which are likely to be incurred on your behalf during this Engagement. Direct expenses include reasonable and customary 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 matter, FTI will be compensated by you at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

The Company agrees to promptly notify FTI if the Company or any of its subsidiaries or affiliates extends (or solicits the possible interest in receiving) an offer of employment to a principal or employee of FTI involved in this Engagement and agrees that FTI has earned and is entitled to a cash fee, upon hiring, equal to 150% of the aggregate first year's annualized compensation, including any guaranteed or target bonus and equity award, to be paid to FTI's former principal or employee that the Company or any of its subsidiaries or affiliates hires at any time up to one year subsequent to the date of the final invoice rendered by FTI with respect to this Engagement.

In a case under the Bankruptcy Code, fees and expenses may not be paid without the express prior

approval of the bankruptcy court. In most cases of this size and complexity, on request of a party in interest, the bankruptcy court permits the payment of interim fees during the case. The Company agrees that, if asked to do so by us, the Company will request the bankruptcy court to establish a procedure for the payment of interim fees during the case that would permit payment of interim fees. If the bankruptcy court approves such a procedure, we 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 reasonable fee to be determined at the conclusion of our representation.

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 court. The Company understands that while the arrangement in this paragraph may be altered in whole or in part by the bankruptcy court, the Company shall nevertheless remain liable for payment of court approved post-petition fees and expenses. Such items are afforded administrative priority under 11 U.S.C. § 503(b)(1). The Bankruptcy Code provides in pertinent part, at 11 U.S.C. § 1129(a)(9)(A), 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).

- a) FTI may stop work or terminate the Agreement immediately upon the giving of written notice to the Client (i) if payments are not made in accordance with this Agreement, (ii) if the Application is not approved by the Bankruptcy Court, (iii) if the Chapter 11 case is dismissed or converted to a Chapter 7 proceeding, 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. (ii) In the event that FTI is employed post-petition as a "professional person" pursuant to § 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, the bankruptcy court permits the payment of interim fees during the case. The 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. If the Bankruptcy Court approves such a procedure, we 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 reasonable fee to be determined at the conclusion of our Engagement.
- c) Any unpaid 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 court. The Client understands that while the arrangement in this paragraph may be altered in whole or in part by the bankruptcy court, the Client shall nevertheless remain liable for payment of court approved post-petition fees and expenses. Such items are afforded administrative priority under 11 U.S.C. § 503(b)(1). The Bankruptcy Code provides in pertinent part, at 11 U.S.C. § 1129(a)(9)(A), that a plan cannot be confirmed unless 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).

- 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:

Vobev, LLC
5454 W 150 S
Salt Lake City, UT 84104

Attention: Dennis Christensen

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 agreement.

4. Notices

Notices under this Agreement to the Client shall be provided as set forth in paragraph 2(e).

Notices to FTI shall be to:

227 West Monroe Street
Suite 900

Chicago, IL 60606

Attn: Carlin Adrianopoli

Phone: 847-858-4161

Email: Carlin.Adrianopoli@fticonsulting.com

And :

999 17th Street

Suite 700

Denver, CO, 80202

Attn: Alan Boyko

Phone: 574-309-1795

Email: Alan.boyko@fticonsulting.com

Notices shall be provided by (a) email, (b) hand delivery, or (c) overnight delivery. If provided by email or hand delivery, they shall be deemed effective the date given. If provided by overnight delivery, they shall be deemed effective on the date of actual receipt.

5. Miscellaneous

This Agreement: 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 assigns; may be executed by facsimile (followed by originals sent via regular mail), 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 Agreement 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.

Based on our understanding of the parties involved in this matter, we have compiled a list of interested parties (the "Potentially Interested Parties") and have undertaken a limited review of our records to determine FTI's professional relationships with the Company and such Potentially Interested Parties. From the results of such review, we are not aware of any conflicts of interest or relationships that we believe would preclude us from performing the Services.

As you know, however, we are a large consulting firm with numerous offices throughout the world. We are regularly engaged by new clients, which may include one or more of the Potentially Interested Parties. The FTI professionals providing services hereunder will not accept an engagement that directly conflicts with this Engagement without your prior written consent.

If this letter correctly sets forth our understanding, please so acknowledge by signing below and returning a signed copy of this letter to us.

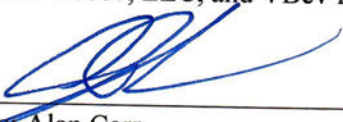
Very truly yours,

FTI CONSULTING, INC.

By: /s/ Alan Boyko
Name: Alan Boyko
Title: Senior Managing Director

ACCEPTED AND AGREED this 25th Day of November, 2024

On behalf of Vobev, LLC, and VBev LLC

By: 

Name: Alan Carr

Title: Independent Board Member

Date: _____

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 the Vobev, LLC dated as of November 25, 2024 (the "Engagement Letter"). The Engagement Letter and these Standard Terms and Conditions annexed thereto (collectively, the "Engagement Contract") form the entire agreement between us relating to the Services and replace and supersede any previous proposals, 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.

1. Reports and Advice

- 1.1 **Use and purpose of advice and reports**— Any advice given or report issued by us is provided solely for your use and benefit and only in connection with the purpose in respect of which the Services are provided. Unless required by law, you shall not provide any advice given or report issued by us to any third party, or refer to us or the Services, without our 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. In no event, regardless of whether consent has been provided, shall we 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** – Our performance of the Services is dependent upon you and the Company providing us with such information and assistance as we may reasonably require from time to time.
- 2.2 **Punctual and accurate information** – You and Company personnel shall use reasonable skill, care and attention to ensure that all information we may reasonably require is provided on a timely basis and is accurate and complete and relevant for the purpose for which it is required. You and the Company shall also notify us if you subsequently learn that the information provided is incorrect or inaccurate or otherwise should not be relied upon.
- 2.3 **No assurance on financial data** – While our 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. Company management will be responsible for any and all financial information they provide to us during the course of this Engagement, and we will not examine or compile or verify any such financial information. Moreover, the circumstances of the Engagement may cause our 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, we will not express any opinion or other form of assurance on financial statements of the Company.
- 2.4 **Prospective financial information** - In the event the Services involve prospective financial information, our 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 we 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. We will take no responsibility for the achievability of results or events projected or anticipated by the management of the Company.

3. Additional Services

- 3.1 **Responsibility for other parties**— You and the Company shall be solely responsible for the work and fees of any other party engaged by you or the Company to provide services in connection with the Engagement regardless of whether such party was introduced to you by us. 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), we 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, we acknowledge that we are not authorized under our Engagement Contract to engage any third party to provide services or advice to you or the Company, other than our agents or independent contractors engaged to provide Services, without your or the Company's written authorization.

4. Confidentiality

- 4.1 **Restrictions on confidential information**— All parties to this Engagement Contract 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 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 Clause 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 Clause 4.1 and Clause 4.2 above, to the extent our engagement is or becomes known to the public, we may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless we and you specifically agree otherwise in writing.
- 4.4 **Internal quality reviews** – Notwithstanding the above, we may disclose any information referred to in this Clause 4 to any other FTI entity or use it for internal quality reviews; *provided*, that we 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, we 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 we shall keep such materials confidential in accordance with the terms of this Engagement Contract.
- 4.6 **Data Protection** - If this Engagement involves the processing of personal data (also referred to herein as personal information) (i) as governed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, the terms of the EU Data Protection Schedule attached hereto as Schedule B shall apply to this engagement and it shall form an integral part of this Agreement and (ii) as governed by the California Consumer Privacy Act, the terms of the California Data Protection Schedule attached hereto as Schedule C shall apply to this engagement and it shall form an integral part of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of Schedule B or Schedule C, the terms of

Schedule B or Schedule C shall prevail in relation to the processing of such personal data. If such personal data is processed in connection with this engagement, Client shall notify FTI in writing before any personal data is disclosed to FTI.

5. Termination

5.1 Termination of Engagement with notice— Termination of Engagement with notice—This Agreement is terminable by the Client or by FTI at any time upon the giving of thirty (30) days written notice, or sooner upon immediate payment in full for outstanding and accrued obligations to FTI up to the termination date. 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, in the event of a bankruptcy, 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.

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 3 and 4 of the Engagement letter, and Clauses 1.1, 4, 6 and 7 of the Standard Terms and Conditions, are intended to survive such termination or expiration and shall continue to bind all parties for a period of 2 years.

6. Indemnification, Insurance and Liability Limitation

6.1 Indemnification – The Company 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 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 or willful misconduct of the Indemnified Person or Persons in respect of whom such liability is asserted (an "Adverse Determination"). The Company shall pay damages and expenses, including reasonable 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 agreement 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 Agreement 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 or delayed), 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 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 or 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 Company or its affiliates will receive the benefit of the most favorable indemnification and advancement provisions provided by the Company to its directors, officers and any equivalently placed employees, whether under the Company's charter or by-laws, by contract or otherwise. The Company shall specifically include and cover employees and agents serving as directors and officers of the Company or affiliates from time to time with direct coverage under the Company's policy for liability insurance covering its directors, officers and any equivalently placed employees. Prior to FTI accepting any director or officer position, the Company 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 Company shall maintain such D&O insurance for the period through which claims can be made against such persons. In the event the Company is unable to include FTI employees and agents under the Company's policy or does not have first dollar coverage acceptable to FTI in effect for at least \$5 million, FTI may, subject to the prior written consent of the Company, 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 Company as an out-of-pocket expense. Notwithstanding anything to the contrary, the Company'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 Company'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).

This indemnity shall not apply to any portion of any such losses, claims, damages, liabilities and expenses to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted primarily from the bad faith, gross negligence, willful misconduct or violation of law of any such Indemnified Party.. The Client agrees to use commercially reasonable best efforts to (i) include [insert FTI employee name(s) serving as interm management officers known at the time] and any other FTI personnel who assume officer or director positions with the Client or who perform Services hereunder, FTI and its agents, employees, officers, subcontractors, directors, joint venture partners and members, as insureds under the Client's directors and officers insurance; and (ii) unless it is unable to do so at a commercially reasonable cost, purchase a three-year directors and officers insurance "tail" or runoff policy (or such a policy for such shorter period as Client has the right to or is otherwise able to purchase) covering the period of FTI's service. In connection with this engagement Client represents to FTI that Client hereby represents 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** – You agree that no Indemnified Person shall be liable to you, or your successors, affiliates or assigns for damages in excess of the total amount of the fees paid to FTI under this Engagement Contract. Excluding Company's indemnification obligations for third party claims, neither party shall be liable for consequential, indirect or punitive damages, damages for lost profits or opportunities or other like damages or claims of any kind.

You and the Company agree that no Indemnified Person shall have any liability as a result of 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, other than liabilities that shall have been determined by final non-appealable order of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of an Indemnified Person or Persons. 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.

7. **Governing Law, Jurisdiction, WAIVER OF JURY TRIAL, and Compliance with Law**

- 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.** - 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. 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.

- 7.3 **WAIVER OF JURY TRIAL** – TO FACILITATE JUDICIAL RESOLUTION AND SAVE TIME AND EXPENSE, THE COMPANY 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** - The Company 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 Company 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 Company or FTI, or otherwise take any action that would result in a violation of any of the ABC/AML/Sanction Laws by either Company or FTI. The Company shall promptly notify FTI 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 the Company or its directors, officers, employees or agents.

FTI CONSULTING, INC.

Confirmation of Standard Terms and Conditions

Subject to the terms and conditions of the Engagement Letter, we agree that FTI Consulting, Inc. is engaged upon the terms set forth in these Standard Terms and Conditions as outlined above.

On behalf of Vobev, LLC and VBev, LLC

By: _____

Name: Alan Carr

Title: Independent Board Member

Date: _____

SCHEDULE A

STANDARD RELEASE LETTER

[Nonclient Recipient Letterhead]

[Date]

FTI Consulting, Inc.

Dear Mr./Ms. _____:

_____ ("Client") has informed **[name of recipient]** that FTI Consulting, Inc. ("FTI") has performed certain procedures to assist Client in connection with the _____. We understand that the work performed by FTI was performed in accordance with instructions provided by Client and was performed exclusively for Client's sole benefit and use.

Client has requested that FTI provide **[name of recipient]** access to the report of its findings dated **[date]**. **[name of recipient]** acknowledges that this report was prepared at the direction of Client and may not include all procedures deemed necessary for the purposes of **[name of recipient]** and that certain findings and information may have been communicated to Client that are not reflected in the report. **[name of 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) **[name of 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 **[name of recipient]** access to the report and, if requested by **[name of recipient]**, discussing the report, **[name of 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 **[name of recipient]** in connection with such access.

[name of recipient] agrees to release FTI and its personnel from any claim by **[name of recipient]** that arises as a result of FTI permitting **[name of recipient]** access to the report. Further, **[name of recipient]** agrees not to disclose or distribute the report, or information received, orally or in writing from FTI to any other parties without FTI's prior written consent.

Acknowledged by **[name of recipient]** representative:

By: _____
(Name of Company official)

Title: _____

Date: _____

SCHEDULE B

FTI CONSULTING DATA PROTECTION SCHEDULE

This Data Protection Schedule ("**Schedule**") forms part of the contract for services to which it is an attachment (the "**Contract**") between the client party identified in the Contract (the "**Client**") and the relevant FTI Consulting group entity identified in the Contract ("**FTI**").

1 Definitions

- 1.1 In this Schedule, unless otherwise defined herein, all defined terms shall have the meaning set out in the Contract.
- 1.2 In this Schedule, the following terms shall have the meanings set out below:
- 1.2.1 "**Data Protection Laws**" means all legislation protecting the personal data of natural persons that is applicable to the processing of Personal Data under this Schedule, including (without limitation) the GDPR and any national legislation which supplements the GDPR, and the data protection laws of any other country, state or territory which apply to such processing;
 - 1.2.2 "**EEA Standard Contractual Clauses**" means the Standard Contractual Clauses set out in the European Implementing Decision (EU) 2021/914 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679, as updated, amended, replaced or superseded from time to time by the European Commission;
 - 1.2.3 "**GDPR**" means the General Data Protection Regulation (EU) 2016/679;
 - 1.2.4 "**Restricted Transfer**" means a transfer of Personal Data from Client to FTI in circumstances where such transfer would be prohibited by Data Protection Laws in the absence of the EEA or UK Standard Contractual Clauses;
 - 1.2.5 "**Standard Contractual Clauses**" means either the EEA or UK Standard Contractual Clauses, as applicable to a Restricted Transfer;
 - 1.2.6 "**UK Standard Contractual Clauses**" means the standard contractual clauses for the transfer of personal data to Processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision 2010/87/EU, as updated, amended, replaced or superseded from time to time by the UK government; "**UK GDPR**" means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; and
 - 1.2.7 "**Personal Data**", "**Process**", "**Controller**", "**Processor**", "**Data Subject**", "**Supervisory Authority**" and "**Personal Data Breach**" shall have the meanings given to them in the Data Protection Laws.

2 Controller Terms

- 2.1 FTI and the Client will each act as separate and individual Controllers in relation to any Personal Data (including, without limitation, Personal Data relating to any of the Client's workers, FTI's workers, any litigation or arbitration opponent or customer or vendor or transaction partner) Processed by the Client or FTI to deliver the services set out under the Contract.
- 2.2 FTI and the Client will each comply with its own respective obligations under the Data Protection Laws in relation to their Processing of Personal Data under the Contract. In particular, the Client will ensure that any disclosures of Personal Data to FTI are lawful, and, in each case where necessary under the Data Protection Laws, the Client has notified and secured the consent of the relevant Data Subjects.
- 2.3 FTI may appoint Processors as required to deliver the services, who will process the Personal Data on FTI's behalf and at FTI's direction. Further, FTI may disclose Personal Data to other Controllers:
- 2.3.1 where necessary to deliver the services (including, but without limitation, law firms, accountants, other third party experts and any member of FTI's group of companies); or
- 2.3.2 pursuant to a legally binding written request, an order or request of a court of competent jurisdiction or any governmental or regulatory authority or where disclosure is required by applicable law or regulation ("**Legal Process**"). In relation to any Legal Process, FTI shall assess the lawfulness of the request before responding, and shall take any steps required by Data Protection Laws to protect Personal Data prior to its disclosure (including, without limitation, with respect to data minimization and data security);
- 2.4 *In respect of any Restricted Transfer subject to the GDPR, the parties hereby enter into Module 1 of the EEA Standard Contractual Clauses (with Client as data exporter and FTI as data importer), which is hereby incorporated by reference into this Schedule and which shall come into effect upon the commencement of a Restricted Transfer. The parties make the following selections for the purposes of Module 1:*
- 2.4.1 *Clause 7 – Docking clause shall apply;*
- 2.4.2 *Clause 11(a) – Redress the optional language shall not apply;*
- 2.4.3 *Clause 13(a) – Supervision*
- 2.4.3.1 *Where Client is established in an EU Member State, the following shall apply: "The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer shall be the supervisory authority of the Member State in which Client is established or (if different) the lead supervisory authority of the Client in respect of a cross-border processing activity". OR*
- 2.4.3.2 *Where Client is not established in an EU Member State, but falls within the territorial scope of application of the GDPR in accordance with Article 3(2) and has appointed a representative pursuant to Article 27(1) of the GDPR the following shall apply: "The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, shall act as competent supervisory authority." OR*
- 2.4.3.3 *Where Client is not established in an EU Member State, but falls within the territorial scope of application of the GDPR in accordance with Article 3(2) without however having to appoint a representative the following shall apply: "The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority."*

- 2.4.4 *Clause 17 – Governing law “Option 1” shall apply and the “Member State” shall be the Republic of Ireland;*
- 2.4.5 *Clause 18 – Choice of forum and jurisdiction the Member State shall be the Republic of Ireland;*
- 2.4.6 *Annex 1 – the data exporter is Client and the data importer is FTI (in each case as identified, including in relation to their places of establishment, in the Principal Agreement) and the description of transfer is deemed to be as described in Annex 1 to this Schedule;*
- 2.4.7 *Annex 2 – the technical and organizational security measures are deemed to be as described in Annex 2 to this Schedule; and*
- 2.4.8 *Annex 3 – not applicable.*
- 2.5 *In respect of any Restricted Transfer subject to the UK GDPR, the parties hereby enter into the UK Standard Contractual Clauses (with Client as data exporter and FTI as data importer), which are incorporated by reference into this Schedule and which shall come into effect upon the commencement of a Restricted Transfer. For the purposes of clause II h) of the UK Standard Contractual Clauses, the Parties shall be deemed to have selected option (iii). Annex 2 to the UK Standard Contractual Clauses shall be deemed to be prepopulated with the relevant sections of the Annex to this Schedule. If at any time the UK government approves the EEA Standard Contractual Clauses for use under the UK GDPR, the provisions of paragraph 2.4 shall apply in place of this paragraph 2.5 in respect of Restricted Transfers subject to the UK GDPR, subject to any modifications to the EEA Standard Contractual Clauses required by the UK GDPR (and subject to the governing law of the EEA Standard Contractual Clauses being English law).*
- 2.6 The Client acknowledges and agrees that certain Processors or Controllers engaged by FTI under paragraph 2.3 may be located in places that may require cross-border transfers of Personal Data. In respect of transfers by FTI to such Controllers or Processors, FTI will take steps in accordance with the Data Protection Laws to ensure an adequate level of protection for the Personal Data Processed by such Processors or Controllers. Where such a Controller or Processor notifies FTI that it may no longer be able to provide an adequate level of protection in accordance with Data Protection Laws, FTI shall independently assess the level of protection provided and, where necessary, shall take mitigating steps to improve the level of protection or, where this is not possible, terminate the transfer.
- 2.7 The Client acknowledges that FTI’s email records are replicated onto a Microsoft 365 Cloud system in the United States of America and the Client hereby consents that any Personal Data that is provided to FTI by email will be replicated accordingly. To the extent that the Client wishes to transmit certain information or data to FTI and the Client objects to that data being replicated in accordance with this paragraph, the Client will use a communication or transmission method other than e-mail or will use an alternative e-mail system.

SCHEDULE C

FTI CONSULTING CALIFORNIA DATA PROTECTION SCHEDULE

This California Data Protection Schedule ("Schedule") forms part of the contract for services to which it is an attachment (the "Contract") between the client party identified in the Contract (the "Client") and the relevant FTI Consulting group entity identified in the Contract ("FTI"). FTI will be functioning as a service provider.

1. Processing of Personal Information.

In connection with FTI's provision of services to Client under the Contract, if FTI receives any personal information (as such term is defined under the California Consumer Privacy Act) from or on behalf of Customer, then FTI:

- (a) will only process such personal information for the purpose of providing the services;
- (b) will not retain, use, or disclose such personal information for any purpose other than to perform the services or outside of the direct business relationship between FTI and Client;
- (c) will not sell, rent, release, disclose, disseminate, make available, transfer or otherwise communicate such personal information to any third party for monetary or other valuable consideration; and
- (d) certifies that it understands the restrictions on its processing of such personal information as set forth in this sentence, and will comply with them.

FTI may disclose personal information to FTI's service providers in connection with such service providers providing services to FTI, and FTI may permit such service providers to process personal information as necessary for FTI to provide the services to Client.

Annex 1: Description of Personal Data Processing

This Annex includes certain details of the Processing of Personal Data by FTI under the Principal Agreement.

1. Subject matter and duration of the Processing of the Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Principal Agreement and this Schedule.

2. The nature and purpose of the Processing of the Personal Data

FTI is engaged to provide Services to Client which involve the Processing of Personal Data. The scope of the Services are set out in the Principal Agreement, and the Client Personal Data will be Processed by FTI for purposes determined by it, in connection with the delivery of those Services and compliance with the terms of the Principal Agreement, including this Addendum, as well as applicable laws.

3. The types of the Personal Data to be Processed

Client customer or employee information which may be collected in the course of delivering consulting and advisory services to Client, including name, title, gender, personal contact details (address, telephone number, email address), work address, work email, work telephone numbers, job title, and other types of Personal Data supplied by the Client to FTI pursuant to the Principal Agreement.

4. The categories of Data Subject to whom the Personal Data relates

The categories of Data Subjects are determined by the nature of the client engagement, the details of which are covered in the Principal Agreement.

5. The obligations and rights of Client

The obligations and rights of Client are set out in the Principal Agreement and this Schedule.

6. Frequency of Restricted Transfers (where applicable):

As necessary to deliver Services for the duration of the Principal Agreement.

7. The period for which Personal Data subject to Restricted Transfers will be retained (where applicable):

In accordance with FTI's data retention policies, copies of which are available upon request.

Annex 2: Technical and Organizational Security Measures

FTI Consulting maintains the following technical and organizational security measures when processing Personal Data for its clients.

- Measures of pseudonymisation and encryption of personal data

When data at rest leaves our direct control (such as backup tapes, removable hard drives, etc.) the data is encrypted using AES 256-bit encryption. All laptops utilize full disk encryption. Data that is in transit over public circuits is encrypted in transit using SSL. FTI Consulting additionally deploys firewalls throughout its networks to allow and deny specific network traffic using key indicators such as source/destination address, source/destination port, etc.

- Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident

FTI requires new employees/contractors to acknowledge receipt of the following policies including: Code of Ethics and Business Conduct, Anti-Corruption Policy, Acceptable Use of Technology Resources, Confidentiality Agreement, Employee Handbook Policy on Inside Information & Insider Trading, and Time Recording Policy.

FTI Consulting has a documented policy for business continuity and disaster recovery that has been approved by management, communicated properly and is maintained and reviewed. The general details are reflected in the FTI Consulting Information Security Policy. The recovery point objective exceeds 4 hours and the recovery time objective exceeds 24 hours. The specific tools used for backups vary by region.

- Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

FTI has access to all major vendor security bulletins and have controls over identifying, scheduling, testing, and deploying patches. The deployment time is 14 days for high and within 24 hours for critical/emergency patches.

FTI has controls over identification of vulnerabilities, risk ranking, reporting, and remediation. This includes perimeter vulnerability scans that must be performed at least quarterly and semi-annual internal vulnerability scans that cover workstations, servers, and network devices.

FTI performs internal penetration test to identify flaws in the internal security controls that could allow an attacker to surreptitiously gain access to sensitive data and/or disrupt critical business systems. The organization must also perform external network penetration test to identify potential vulnerabilities which could be exploited to gain access to systems and data or to establish a foothold into internal network from which to launch further attacks.

FT's cybersecurity team tracks the resolution of vulnerabilities. Vulnerabilities that are not resolved as part of patching cycles must be tracked on a vulnerability log or similar mechanism.

- Measures for user identification and authorization

FTI uses unique IDs and if generic IDs should be disabled unless there is an approved security exception. FTI users authenticate through Active Directory (AD), SSO used when possible, and remote connection requires two factor authentication and leverages FTI's Corporate DUO two factor technology. Duo Security generates passcodes (similar to a PIN Code) to mobile devices for login and can receive push notifications for easy updates. Duo Security is integrated with OneLogin (our SSO platform) providing a unified authentication solution.

Privileged and remote access must include multi-factor authentication and secure mechanisms (e.g., TACACs+, RADIUS) must be used on all network devices.

FTI password complexity (i.e. characters, length), lockout settings, expiration settings meets the following requirements:

- Contain both upper and lower case characters (e.g., a-z, A-Z)
- Have digits and punctuation characters as well as letters e.g., 0-9,!@#\$%^&*()_+|~=-\`{}[]:;“,“<?.,./)
- Contains at least 12 characters for standards accounts and 15 characters in length for admin accounts
- Must be changed at least every 90 days
- Are not words in any language, slang, dialect, jargon, etc.
- Are not based on Confidential Information, names of family, etc.
- User accounts are locked after 10 unsuccessful logins. Account lockout for 30 mins. Reset after 30 mins.
- Password history - 24 passwords remembered

Passwords are stored protected in an encrypted format.

- Measures for the protection of data during transmission and measures for the protection of data during storage

FTI has Data Loss Prevention (DLP) and extrusion prevention tools that restrict sending sensitive data over unsecure mail. Anomalies that exceed the normal traffic patterns are noted and appropriate action is taken to address them.

FTI protects data in transmission which include the following acceptable methods:

- Email: Transport Layer Security (“TLS”) Internet protocol, which provides security for all email transmissions over the public Internet may be setup with using opportunistic or mandatory TLS connections. Only TLS 1.2 or TLS 1.3 is acceptable.
- "Mailbox to mailbox" encryption that secures email messages and electronic files (using 256-bit AES encryption).
- Secure FTP: FTP utilizes TLS or SSH to allow us to share data with clients securely over the Internet. Only TLS 1.2 or TLS 1.3 is acceptable.
- External Encrypted Drive: Must use FIPS 140-2/AES 256-bit encryption or stronger.
- File Stores: Matter/Engagement related files stored centrally on the network are secured so that only those explicitly authorized can access the files.

FTI stores data in an environment that is not internet facing and segregated from the demilitarized zone by a firewall. The data must be logically segregated from other client or corporate data. Different tools may be employed depending upon the nature and/or location of the work.

- Measures for ensuring physical security of locations at which personal data are processed

Specific physical security provisions vary depending on office location, however, as per the Information Security policy, access to company premises, including delivery and loading areas, must require badge access. Badge access is managed by local facilities or ITG, who use a badge kiosk to produce access badges. All badge issuances and updates require management approval.

- Measures for ensuring events logging

FTI logs activity which is stored for 7 years. Data is logged at sufficient level (i.e. user ID, activity) and logging is enabled for the entire environment. The logging must provide relevant information (i.e. authorized & unauthorized attempts, remote access). System event and audit logs should capture the following events as applicable:

- Authentication failures
- Software or service failures

- Logon and use of privileged IDs
- Database changes
- Adding/deleting users
- Password Changes
- Adding/deleting groups and/or users associated with groups
- Changing audit log configuration or disabling audit subsystem

FTI uses SecureWorks which provides a Security Incident and Event Management (SIEM). The foundation of the SIEM includes Red Cloak endpoint event logs analysis, which includes an industry-leading assessment of current and zero-day threats and vulnerabilities.

- Measures for ensuring system configuration, including default configuration Measures for internal IT and IT security governance and management

FTI has processes in place to confirm compliance with configuration standards. This includes a process for newly created device (i.e., checklist), at least annual reviews and hardening, removal of unnecessary / insecure services, and alarms set for key events (i.e. change in security group, configuration).

- Measures for certification/assurance of processes and products

FTI holds the Certified Enterprise designation from Verizon Cybertrust and participates in their Security Management Program (SMP). The SMP is a comprehensive security risk reduction and certification program that addresses all aspects of proactive information security, from network and system analysis to physical and policy inspection. The cornerstone of SMP is the International Standards Organization (ISO) standard 27002.

As part of the Cybertrust Third Party assessment schedule, FTI Consulting's Global Cybersecurity and Privacy function undergoes the following reviews by the Verizon Security Certification organization:

Policy Review — evaluates the documentation and inspects the contents of key security policies — Annually.

Process and Procedure Validation — Annually.

Physical Inspection — evaluates the implementation of security controls in the physical environment surrounding critical network infrastructure, including doors, HVAC, entry logs, power redundancy, etc. — Annually.

External Risk Assessments (Network and System-level scans) — Quarterly identifies possible risk areas in an organization's external network infrastructure and assesses its consistency with key controls.

Penetration testing (External and Internal – Network and System-level) is conducted by a separate third-party — Annually.

Individual business units may hold additional certifications or use tools that are supported by additional certifications.

- Measures for ensuring data minimisation

FTI only acquires data for the intended purpose by working with the client or business partner to ensure only the minimum amount of necessary data is obtained.

- Measures for ensuring data quality

FTI Consulting is dedicated to providing its clients with high quality services that meet our standards of excellence and integrity. The quality of the work for each of our clients is monitored by the Senior Managing Directors responsible for each engagement along with the highly qualified colleagues in their practice teams and business segments. On a broader level, FTI sets the tone for our global organization in our Code of Conduct (<https://www.fticonsulting.com/~media/Files/us-files/our-firm/guidelines/fti-code-of-conduct.pdf>) which discusses our commitment to quality throughout, and in particular in our Statement of Values.

FTI takes into account the principle of purpose limitation, while making sure that the data is adequate, relevant and not excessive for the legitimate purpose. FTI enables data subjects to exercise their rights, including the rights of access and, as appropriate, the rectification, erasure or blocking of Personal data and keep data accurate, and not retain it any longer than necessary.

- Measures for ensuring limited data retention

FTI has a records retention policy that ensures records are retained for required and necessary periods of time; providing that records which are no longer useful are properly destroyed; and providing that records to be retained are stored methodically and economically. FTI uses their reasonable and best efforts to prevent the premature destruction of Records. The organization must have processes to return data upon end of contract and destroy data using appropriate mechanisms upon Department of Defense (DoD) and National Institute of Standards and Technology (NIST) standards for all data bearing devices.

- Measures for ensuring accountability

FTI has a defined process to resolve complaints about privacy and its collection or use of personal information in compliance with the EU-US Privacy Shield Principles. FTI has measures in place to ensure complaints are resolved within 1 month. Unless otherwise dictated by local law, the exact number of days to comply with a request varies, depending on the month in which the request was made and is calculated based on the day the request is received plus one (regardless of whether the day is a working day or not) until the corresponding calendar date in the next month.

- Measures for allowing data portability and ensuring erasure

FTI receives requested Personal Data directly or provide access to a tool which allows the requestor to extract the information themselves using a self-service type model.

The Personal Data requested is required to be provided in a format and structure which is commonly used and machine-readable. The following machine-readable formats:

- CSV: (Comma separated values) a format that stores tabular data (numbers and text) in plain-text form;
- PDF: (Portable Document Format) a file format used mainly to represent documents such that layout will stay the same independent of the system environment;
- XML: (eXtensible Markup Language) a markup language that defines a set of rules for encoding documents in a format that can be both human and machine readable;
- JSON: (JavaScript Object Notation) a machine-readable data format derived from the JavaScript language used for representing simple data structures and associative arrays; or
- HTML: (HyperText Markup Language) the main markup language for displaying web pages and other information in a web browser.

FTI has a data erasure process in place to track and manage responses, and, as necessary, provide updates to the relevant regulatory authority and/or input into management reports. The organization must verify the identity of the data subject before disclosing any personal information. The organization should only refuse to comply with an erasure request if it is "manifestly unfounded or excessive" or, alternatively may elect to charge a "reasonable fee." The response is in written communication together with the documents containing the proper erasure of data.