

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**IN RE:**

**PICCADILLY RESTAURANTS, LLC,  
*ET AL.*,**

**DEBTORS**

\* **CASE NO. 12-51127**  
\*  
\* **(JOINT ADMINISTRATION)<sup>1</sup>**  
\*  
\* **CHAPTER 11**  
\*  
\* **JUDGE ROBERT SUMMERHAYS**

**SUPPLEMENTAL AND AMENDED APPLICATION FOR AN ORDER AUTHORIZING  
THE DEBTORS TO CONTINUE THE RETENTION OF FTI CONSULTING, INC.,  
PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 2014(a) NUNC PRO TUNC TO DECEMBER 5, 2013**

**NOW INTO COURT**, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), who submit this Supplemental and Amended Application (the “Application”), for an Order, substantially in the form of **Exhibit 1**, authorizing the Debtors to continue the retention of FTI Consulting, Inc. (“FTI”), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), *nunc pro tunc* to December 5, 2013. In support of this Application, the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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<sup>1</sup> Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

## **BACKGROUND**

1. On September 11, 2012 (the “Petition Date”), the Debtors filed petitions for relief under the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors was appointed in these Chapter 11 cases on October 23, 2012.

3. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

4. The statutory predicates for the relief requested herein are §§ 327, 328, 363, and 1107 of the Bankruptcy Code.

## **RELIEF REQUESTED**

5. By this Application, the Debtors seek the entry of an order, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), authorizing the Debtors to continue those services (the “Original Services”) through confirmation of a Plan of Reorganization. A hearing on plan confirmation is currently scheduled for January 13 and 14, 2014.

## **FTI AND THE ORIGINAL ENGAGEMENT CONTRACT**

6. FTI, founded in 1982, is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in a complex legal, regulatory and economic environment. FTI works closely with clients to anticipate, illuminate, and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, reputation management and restructuring. FTI professionals have been called upon in a number of complex restructuring situations to provide crisis management to distressed companies, and official committees, including, but not limited to the chapter 11 cases of *In re NewPage Corp.*, *et*

*al.*, No. 11-12804 (KG)(Bankr. D. Del. 2011); and *In re Entergy New Orleans, Inc.*, No. 05-17697 (Bankr. E.D. La. 2005).

7. FTI has extensive experience providing financial and restructuring services in chapter 11 proceedings, and has an excellent reputation for the services it has rendered in chapter 11 cases on behalf of debtors and creditors throughout the United States. FTI is well-qualified and able to advise the Debtors in a cost-effective, efficient and timely manner.

8. The Debtors hired FTI to provide financial services related to their restructuring efforts and plan preparation pursuant to an Engagement Contract, dated January 28, 2013 (including the Standard Terms and Conditions attached thereto, the “Original Engagement Contract”), a copy of which is attached to this Application as **Exhibit 2**.

9. This Court approved the retention and employment of FTI pursuant to that certain Engagement Contract, as modified by this Court’s Order entered on March 5, 2013 (Docket # 536)(the “Original FTI Retention Order”), for an “initial four month period.”

10. On May 24, 2013 the Debtors filed the *Application for an Order Authorizing the Debtors to Continue and Expand the Scope of Employment and Retention of FTI Consulting, Inc., Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a)*(Docket #848)(the “First Extension Application”).

11. On July 16, 2013, this Court granted the First Extension Application and extended FTI’s employment from July 5, 2013 until October 5, 2013. (Docket # 937).

12. On September 17, 2013, this Court, by signed minute entry, extended FTI’s employment until December 5, 2013. (Docket # 1114).

13. Since the effective date of the Original FTI Retention Order, FTI has provided value to the Debtor by providing a variety of services, and the Debtors wish to continue those services past the December 5, 2013 date through plan confirmation.

14. Subject to an Order of this Court and consistent with the Original Engagement Contract, the Debtors request approval of the continued employment and retention of FTI to continue to render the following Original Services:

- Develop an understanding of the businesses' current financial situation and the short and long term objectives.
- Review and/or assist in updating individual location profitability analyses.
- Work with the Debtors on 13-week forecasts and long term budget with specific focus on cash management and reporting and documentation as necessary.
- Assist the Debtors with various initiatives and analyses required by the restructuring process including identification and review of strategic options, reviews related to the plan confirmation process, and the assessment of current working capital control procedures.
- Assist the Debtors in the preparation of financial information for distribution to the lenders and other stakeholders, including, but not limited to: cash flow projections and budgets; long term planning support packages; and cash sufficiency analyses.

15. As in the Original Engagement Contract, FTI would continue to receive the fixed monthly fee of Seventy-Five Thousand Dollars (\$75,000) (the "Monthly Fee") through the extended terms of the engagement.

## **BASIS FOR RELIEF**

16. Pursuant to section 327(a) of the Bankruptcy Code, a debtor in possession is authorized to employ professional persons “that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor in possession] in carrying out [its] duties under [the Bankruptcy Code.]” 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code modifies section 101(14) (definition of “disinterested person”) and section 327(a) of the Bankruptcy Code in chapter 11 cases, by providing “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.” 11 U.S.C. § 1107(b). Under section 328(a) of the Bankruptcy Code, with the court's approval a debtor in possession may employ professional persons under section 327(a) of the Bankruptcy Code “on any reasonable terms and conditions of employment, including on retainer, on an hourly basis, on a fixed or percentage basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). In obtaining the Original FTI Retention Order, the Debtors believe that FTI satisfied the disinterestedness requirements of the Bankruptcy Code.

17. As required by Bankruptcy Rule 2014(a), this Application sets forth the following: (a) the specific facts showing the necessity for FTI's employment, (b) the reasons for the Debtors' selection of FTI as their financial advisors in connection with their Chapter 11 cases, (c) the professional services to be provided by FTI, (d) the arrangement between the Debtors and FTI with respect to FTI's compensation, and (e) to the best of the Debtors' knowledge, the extent of FTI's connections, if any, to certain parties in interest in these Chapter 11 cases.

18. The Court may authorize FTI's employment pursuant to section 363 of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in

possession “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *see also In re ASARCO, LLC*, 650 F.3d 593, 601 (5th Cir. 2011) (section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard).

19. The Debtors submit that the employment of FTI is a sound exercise of their business judgment pursuant to section 363 of the Bankruptcy Code. FTI can provide the Debtors with substantial expertise necessary to assist in the preparation of a restructuring strategy, and the continued improvement during these Chapter 11 cases. FTI personnel have assisted Debtors’ management and existing professionals to ensure that the estates are managed so as to preserve value. Their continued assistance is vital. Denial of the Debtors’ employment of FTI would unjustly disadvantage the Debtors by denying them the assistance of uniquely qualified restructuring advisors.

#### **NOTICE**

20. Notice of this Application has been given to (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the 30 largest unsecured creditors, the identity of which may be amended from time to time, (c) the twenty (20) additional random unsecured creditors, (d) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, (e) counsel for the Unsecured Creditors’ Committee, and (f) the Office of the United States Trustee. The Debtors submit that no further notice is necessary for this Court to enter an Order granting the relief requested herein.

**WHEREFORE**, for the reasons set forth in this Application and the Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit 1**, (a) authorizing the Debtors to extend the employment of FTI Consulting, Inc. as financial consultants for a period from December 5, 2013 through plan confirmation, and (b) granting such other and further relief as is just and proper.

Respectfully submitted,

/s/ Mark A. Mintz

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

TYLER J. RENCH (#34049)

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**Attorneys for Piccadilly Restaurants, LLC,  
Piccadilly Food Service, LLC, and  
Piccadilly Investments, LLC**

# **Exhibit 1**



**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**IN RE:**

**PICCADILLY RESTAURANTS, LLC,  
*ET AL.*,**

**DEBTORS**

\* **CASE NO. 12-51127**  
\*  
\* **(JOINT ADMINISTRATION)<sup>1</sup>**  
\*  
\* **CHAPTER 11**  
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\* **JUDGE ROBERT SUMMERHAYS**

**ORDER AUTHORIZING THE DEBTORS TO CONTINUE THE RETENTION OF FTI  
CONSULTING, INC., PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY  
CODE AND BANKRUPTCY RULE 2014(a)**

**Considering** the Supplemental and Amended Application (the “Application”) for an Order Authorizing the Debtors to Continue the Retention of FTI Consulting, Inc. (“FTI”), pursuant to sections 327(a) and 328(a) of Title 11 of the United States Code (the “Bankruptcy Code”), and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), filed herein on November 25, 2013

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<sup>1</sup> Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

(Docket #\_\_\_); and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §1334; and consideration of the Application requested therein being a core proceeding pursuant to 28 U.S.C. §157(b); no trustee or examiner having been appointed in these chapter 11 cases, and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided, and a hearing having been held to consider the relief requested in the Application (the "Hearing"); and upon the record of the Hearing, and all of the other proceedings had before the Court; and the Court having found and determined that the relief sought in the Application, is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Application establish just cause for the relief granted herein, and after due deliberation and sufficient cause appearing therefor,

**IT IS ORDERED** that the Application is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), the Debtors are authorized to continue to employ FTI *nunc pro tunc* to July 5, 2013 through plan confirmation.

**IT IS FURTHER ORDERED** that, with respect to the monthly fee of Seventy-Five Thousand Dollars (\$75,000.00) described in the Original Engagement Contract (as defined in the Application) (the "Monthly Fees"):

(a) The Debtors are hereby authorized to continue to pay FTI the Monthly Fee on the first day of each month, in accordance with the Original Engagement Letter; and

(b) FTI is relieved from any requirement to comply with the procedures set forth in this Court's prior Order Granting the Motion for Administrative Procedures for Interim Compensation for Compensation and Reimbursement of Expenses for Professionals and Committee Members (Docket #321) (the "Fee Order"), so that FTI is relieved from any obligation to serve monthly fee statements, and FTI is relieved from any obligation to file and/or serve any applications for interim or final compensation with respect to its Monthly Fee. However, on or before the 15<sup>th</sup> day of the month following the prior month for which services

were rendered, FTI shall provide a monthly fee statement to the United States Trustee, counsel for the Unsecured Creditors' Committee, Counsel for Atalaya, and Counsel for the Debtors. The monthly fee statement will be in a format acceptable to the United States Trustee, but at a minimum will include the total hours worked by each professional at FTI with an allocation of time to each project that person worked on.

**IT IS FURTHER ORDERED** that, in order to be entitled to the reimbursement of any expenses from the Debtors pursuant to this Order and the Original Engagement Letter, FTI is required to comply with the procedures set forth in the Fee Order, including but not limited to filing interim and final fee applications, and is required to otherwise comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court.

**IT IS FURTHER ORDERED** that, in order to be entitled to be paid any Standard Hourly Fees with regard to Additional Testimony (as each of those terms are defined in the Original Engagement Contract) from the Debtors, FTI is required to comply with the Fee Order, including but not limited to filing interim and final fee applications, and FTI is required to otherwise comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court.

**IT IS FURTHER ORDERED** that the Court will retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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This Order was prepared and is being submitted by:

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**Attorneys for Piccadilly Restaurants, LLC,**

**Piccadilly Food Service, LLC, and**

**Piccadilly Investments, LLC**

# **Exhibit 2**



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Suite 1100  
Denver, CO 80202  
+1 303.689.8800 telephone  
+1 303.689.8803 facsimile  
fticonsulting.com

**PRIVATE & CONFIDENTIAL**

January 28, 2013

Mr. Tom Sandeman  
Chief Executive Officer  
Piccadilly Restaurants, LLC  
3232 South Sherwood Forest Boulevard  
Baton Rouge, LA 70816

Re: Retention of FTI in connection with Piccadilly Restaurants, LLC

Dear Mr. Sandeman

**1. Introduction**

This letter confirms that we, FTI Consulting, Inc. ("FTI"), have been retained by you, Piccadilly Restaurants, LLC and its affiliates (collectively, "Piccadilly"), to provide certain financial advisory and consulting services (the "Services"). This letter of engagement (the "Engagement") and the related Standard Terms and Conditions constitute the engagement contract (the "Engagement Contract") pursuant to which the Services will be provided.

**2. Scope of Services**

The Services, to be performed at your direction:

- Develop an understanding of the business' current financial situation and its short and long term objectives.
- Review and/or assist in updating individual location profitability analyses;
- Work with the Company on their 13 week forecasts and long term budget with specific focus on:
  - Cash management and reporting; and,
  - Documentation as necessary.
- Assist the Company with various initiatives and analyses required by the restructuring process including:
  - Identification and review of strategic options;
  - Development of comprehensive sales processes as necessary;
  - Preparation of a Plan of Reorganization; and,
  - Assessment of current working capital control procedures
- Assist the Company in the preparation of financial information for distribution to the lenders and other stakeholders, including, but not limited to: cash flow projections and budgets; long term planning support packages; and cash sufficiency analyses.

- Additional services that are mutually agreed to between the parties.

The Services may be performed by FTI or by any subsidiary of FTI, as FTI shall determine. FTI may also provide Services through its subsidiaries' agents or independent contractors. References herein to FTI and its employees shall be deemed to apply also, unless the context shall otherwise indicate, to employees of each such subsidiary and to any such agents or independent contractors and their employees.

In order for us to provide the Services, it will be necessary for our personnel to have access to certain books, records and reports of Piccadilly and to have discussions with key personnel. We understand that you will undertake to provide the necessary access to Piccadilly management, other key personnel and to books, records, reports and other information as may be reasonably requested.

We will perform the Services in a manner which we believe will permit regular business operations to proceed in an orderly manner, subject to the requirements of the Engagement. However, it is understood that our personnel may need to be on site to both: expedite the review of data; and, to discuss such information with appropriate personnel.

The Services, as outlined above, are subject to change as mutually agreed between us.

FTI is engaged by Piccadilly to provide financial advisory and consulting services only. Accordingly, while we may from time to time suggest options which may be available to you, and further give our professional evaluation of these options, the ultimate decision as to which, if any, of these options to implement rests with Piccadilly. FTI and its employees will not make any management decisions for Piccadilly and will not be responsible for communicating information concerning Piccadilly to the public, its interest-holders or others.

As part of the Services, FTI may be requested to assist Piccadilly (and its legal or other advisors) in negotiating with its creditors, its lenders, its equity holders and/or with other interested parties. In the event that we participate in such negotiations/discussions, the representations made and the positions advanced will be those of Piccadilly and/or its counsel, not FTI or its employees.

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 you as to the nature of the services that we will render and the scope of our engagement.

### 3. Fees

For services rendered during the engagement, FTI will be compensated by a fixed monthly fee, payable monthly in advance, of seventy-five thousand dollars (\$75,000.00) per month.

In addition, if FTI and/or any of its employees are required to testify or provide evidence in connection with matters that do not specifically and directly relate to the Services, FTI will be compensated based upon the time incurred preparing for and providing said testimony and/or evidence, multiplied by our standard hourly rates applicable in the United States, summarized as follows:

	Per Hour
Senior Managing Directors	\$780 - 895
Directors / Managing Directors	\$569 - 745
Consultants/Senior Consultants	\$280 - 530
Administrative / Paraprofessionals	\$115 - 230

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

In addition to the fees outlined above, FTI will bill for reasonable direct expenses which are incurred on your behalf during this Engagement. Direct expenses (including reasonable and customary out-of-pocket expenses such as certain telephone, overnight mail, messenger, travel, meals, accommodations and other expenses specifically related to the engagement) are billed directly to the engagement on a monthly basis.

You agree to promptly notify FTI if Piccadilly, 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 Piccadilly 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.

Piccadilly Restaurants, LLC  
January 28, 2013

4. **Terms and Conditions**

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

5. **Conflicts of Interest**

Based on the list of interested parties (the "Potentially Interested Parties"), provided by you, we have undertaken a limited review of our records to determine FTT's professional relationships with Piccadilly.

From the results of such review, we were not made aware of any conflicts of interest or additional relationships that we believe would preclude us from performing the Services. However, as you know, we are a large consulting firm with numerous offices throughout the United States. We are regularly engaged by new clients, which may include one or more of the Potentially Interested Parties. We will not knowingly accept an engagement that directly conflicts with this Engagement without your prior written consent.

6. **Acknowledgement and Acceptance**

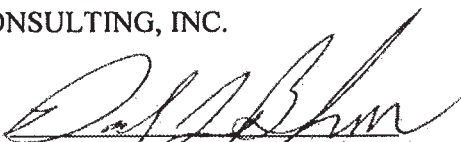
Please acknowledge your acceptance of the terms of this Engagement Contract by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter or the attached Standard Terms and Conditions, please do not hesitate to contact David Beckman at 303.689.8878.

Yours faithfully,

FTI CONSULTING, INC.

By:

  
David Beckman  
Senior Managing Director



Piccadilly Restaurants, LLC  
January 28, 2013

Confirmation of Terms of Engagement

**We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.**

By: \_\_\_\_\_

Piccadilly Restaurants, LLC

Date: \_\_\_\_\_

**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 for Piccadilly dated January 28, 2013. The Engagement letter and the Standard Terms and Conditions (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. 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 your providing us with such information and assistance as we may reasonably require from time to time.
- 2.2 Punctual and accurate information** – You 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 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. Piccadilly 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 Piccadilly.
- 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 Piccadilly.

### 3. Additional Services

- 3.1 **Responsibility for other parties** – You shall be solely responsible for the work and fees of any other party engaged by you 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, 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, other than our agents or independent contractors engaged to provide Services, without your written authorization.

### 4. Confidentiality

- 4.1 **Restrictions on confidential information** – Both parties agree that any confidential information received from the other party shall only be used for the purposes of providing or receiving Services under this or any other contract between us. Except as provided below, neither party will disclose the other party's confidential information to any third party without the other 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.
- 4.2 **Disclosing confidential information** – Notwithstanding Clause 1.1 or 4.1 above, either party will be entitled to disclose confidential information of the other 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 party.
- 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.
- 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.

### 5. Termination

- 5.1 **Termination of Engagement with notice** – Either party may terminate the Engagement Contract for whatever reason upon written notice to the other party; provided; however, that if the Engagement Contract is terminated by FTI without cause, then FTI shall refund to the Company a percentage of any Monthly Fixed Fee it is holding related to the month of termination such percentage being based on the number of days remaining in the month of termination. Should the Engagement contract be terminated by either the Company without cause or the FTI with cause, we will stop all work immediately. You

will be responsible for all fees and expenses incurred by us through the month in which the termination notice is received.

- 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.

**6. Indemnification and Liability Limitation; Waiver of Jury Trial**

- 6.1 **Indemnification** - You agree 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.
- 6.2 **Limitation of liability** - You 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 the Indemnified Person or Persons in respect of whom such liability is asserted. 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.
- 6.3 **WAIVER OF JURY TRIAL** –TO FACILITATE JUDICIAL RESOLUTION AND SAVE TIME AND EXPENSE, YOU AND FTI IRREVOCABLY AND UNCONDITIONALLY AGREE NOT TO DEMAND A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR ANY SUCH OTHER MATTER.
7. **Governing Law and Jurisdiction**-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. 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, from and after the dismissal of the Piccadilly bankruptcy cases. Thereafter, 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.

FTI CONSULTING, INC

**Confirmation of Standard Terms and Conditions**

We agree to engage FTI Consulting, Inc. upon the terms set forth in these Standard Terms and Conditions as outlined above.

By: \_\_\_\_\_

Piccadilly Restaurants, LLC

Date: \_\_\_\_\_