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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[1]	)	Case No. 26-90440
Debtors.	)	(Joint Administration Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 4:00 P.M. (prevailing Central Time) on April 10, 2026.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 10, 2026, at 4:00 P.M. (prevailing Central Time) in Courtroom 400, 515 Rusk St., Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Pérez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Pérez's homepage. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Pérez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this emergency motion (this "Motion"):

I. Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto (respectively, the "Interim Order" and the "Final Order," and together, the "Orders"): (a) authorizing, but not requiring, the Debtors to pay, in the ordinary course of business, based on their sound business judgment, certain prepetition amounts owing on account of Critical Vendor Claims (as defined herein) in an aggregate amount, inclusive of amounts paid pursuant to the Interim Order and the Final Order, not to exceed $1.35 million. Pursuant to and consistent with the terms of the Cash Management Motion, filed contemporaneously herewith, the Debtors have sufficient unrestricted cash on hand to satisfy the interim vendor relief requested. In addition, the Debtors request that the Court schedule a final hearing within approximately thirty days of the commencement of these chapter 11 cases to consider entry of the Final Order.

II. Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 363(b), 503(b), 507, 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules

6003 and 6004, rules 1075-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Cases in the Southern District of Texas.

III. Background

5. As outlined in the *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and Emergency First Day Motions* (the "First Day Declaration"),[2] the Debtors currently operate two key facilities across the United States, each serving distinct roles in the production and recycling of advanced battery materials. In Covington, GA ("Covington") the Debtors operate a black mass shredding facility, which specializes in the pretreatment and shredding of black mass derived from recycled lithium-ion batteries. This facility plays a critical role in the initial stages of battery material recovery, processing up to 30,000 metric tons of batteries annually and producing black mass for further refinement. The Debtors maintain a research and development facility in Westborough, MA focused on the innovation and development of advanced battery materials, including precursor cathode active material ("pCAM"), which is essential for lithium-ion battery manufacturing. In addition, the Debtors are in the process of constructing a battery material plant in Hopkinsville, KY ("Hopkinsville") focused on the production of lithium carbonate and pCAM at commercial scale, supporting the domestic supply chain for electric vehicle batteries and grid-scale energy storage systems. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the First Day Declaration, filed contemporaneously herewith on April 9, 2026 (the "Petition Date").

[2] Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

6. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated as of the date hereof.

IV. Vendors and Related Vendor Claims Overview

7. The primary goal of these chapter 11 proceedings is to preserve liquidity, stabilize operations, and provide the breathing room necessary for the Debtors to explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders.

8. The Debtors' business relies on continuing access to, and relationships with, the Critical Vendors (as defined herein), which includes a narrow subset of highly specialized vendors and suppliers that provide the Debtors with unique and essential services. These vendors and service suppliers are critical to the Debtors' ability to maintain key essential operations while the Debtors explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders. The Critical Vendors are virtually irreplaceable due to (i) the specialized nature of the products and services they provide, (ii) their institutional knowledge of the Debtors' business operations, and (iii) the limited time frame the Debtors have to make key decisions related to their restructuring alternatives. Even where alternatives to certain of the Critical Vendors may exist, the time and costs associated with switching to a new provider would likely be significant and detrimental to the Debtors' estates. In addition, certain of the Critical Vendors may hold liens (or possess the ability to assert liens) on the Debtors' property to secure payment of their prepetition Vendor Claims (as defined herein) and/or be entitled to administrative expense priority to satisfy

their Vendor Claims. Accordingly, any delays or material changes in the delivery of such goods and services as a result of the Debtors' nonpayment of the Vendor Claims would materially harm the Debtors and their key stakeholders and impede a smooth transition into these chapter 11 cases and, ultimately, hinder the Debtors' ability to effectively and efficiently preserve liquidity, stabilize operations, and explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders.

9. The Debtors therefore request authorization to pay certain outstanding prepetition claims held by the Critical Vendors, (collectively, the "Vendor Claims"). Specifically, the Debtors seek authority, but not direction, to pay Vendor Claims in an interim amount not to exceed $1.35 million to satisfy Vendor Claims that will become due during the period between the Petition Date and the final hearing on the Motion (estimated to be thirty days after the Petition Date) (the "Interim Period"), and (ii) $ 1.35 million, in the aggregate upon entry of the Final Order, which includes amounts permitted under the Interim Order.

10. The Debtors will use their business judgment and discretion on a claim-by-claim basis and pay only those Vendor Claims, or a portion thereof, that are critical to (i) the Debtors' ability to maintain safe operations and ability to operate in compliance with relevant local, state and federal guidelines, and (ii) preserving asset value while the Debtors assess their restructuring options in a manner that preserves value for the benefit of all stakeholders. The Debtors will also endeavor to provide the Debtors with favorable postpetition terms in the payment and ongoing relationships with the Critical Vendors.

V. The Critical Vendors

11. The Debtors, with the assistance of their advisors, have spent significant time reviewing and analyzing the Debtors' books and records, accounts payable, key contracts, purchase orders, and vendor lists, consulted with key Debtor employees, and analyzed applicable

laws, regulations, and historical practice to identify the vendors most critical to maximizing the value of the Debtors' estates (the "Critical Vendors"). This review included targeted diligence to assess each vendor's operational necessity, the risk to the Debtors' business and assets if such vendor were not paid (including safety, environmental, regulatory, collateral, and shutdown risks), the availability and feasibility of replacement vendors, and the timing sensitivity of the services provided. In determining which vendors the Debtors consider to be Critical Vendors, the Debtors and their advisors considered, among other things:

a. the importance of the services provided by a vendor or supplier to the Debtors' business;

b. whether services are provided pursuant to a contract or on a purchase order basis;

c. whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to provide services on a postpetition basis;

d. whether the vendor is bound by an agreement pursuant to which the Debtors could compel such vendor to continue performing on prepetition terms;

e. whether the failure to pay a particular vendor could result in the negotiated trade terms being altered as a matter of applicable non-bankruptcy commercial law or regulations;

f. whether the vendor is a sole- or limited-source or high-volume supplier for the services;

g. whether alternative vendors are available that could provide the requisite volume of similar services on equal or better terms, and, if so, whether the Debtors would be able to continue operating without significant disruption to their postpetition operations while transitioning business thereto; and

h. whether certain specifications or contract requirements and conditions prevent, directly or indirectly, the Debtors from obtaining the services from alternative sources.

12. Based on this analysis, the Debtors identified the Critical Vendors whose support is essential to the Debtors' ability to maintain safe and compliant operations and preserve asset value while the Debtors explore a value-maximizing transaction or other restructuring alternatives

for the benefit of all stakeholders. Accordingly, the Debtors, with the assistance of their advisors, identified a limited set of vendors that provide essential services without which the Debtors would struggle to preserve asset value and maintain compliance with local, state, and federal regulations during these cases. In total, the Critical Vendors identified only account for 9% of the Debtors total trade disbursements in the twelve months prior to the petition date.

13. The Critical Vendors collectively provide goods and services to the Debtors, including, but not limited to:

- Health, Safety, Environmental, and Regulatory Compliance. Suppliers, service providers, and vendors relating to health, safety, and environmental and regulatory compliance. These vendors supply critical safety equipment, monitoring systems, and related services necessary to maintain workplace safety standards, prevent incidents, remediate emergency incidents, and comply with applicable occupational health and safety regulations. Vendors also support environmental monitoring, hazardous and non-hazardous waste management, and safety compliance programs necessary to preserve operating permits, comply with regulatory requirements, and protect the health and safety of employees and the public. Many vendors have long-standing relationships and expertise servicing the Debtors' facilities, and therefore substituting these vendors could result in non-compliance or risk the health and safety of the Debtors' employees. Continued performance by these vendors is essential to maintaining safe operating conditions across the facilities, preventing environmental issues and ensuring the Debtors remain in compliance with applicable federal and state regulatory requirements. Any interruption in these

services could create safety risks for personnel, jeopardize environmental risks, expose the estate and impair the value of the Debtors' assets.

- Asset Preservation Expenses. Suppliers, service providers, and vendors relating to operations across the Debtors' facilities that are deemed necessary to effectively maintain safe and compliant operations and preserve asset value at the Debtors' facilities. Most notable, these Critical Vendors include those vendors providing essential repair and maintenance services. These specialized service providers, such as maintenance technicians and site-specific repair specialists, provide highly customized services and are irreplaceable in the short-term. Moreover, an inability to repair and maintain equipment and facilities could have a detrimental impact on the Debtors' estates both jeopardizing the value of the estates assets and exposing the Debtors' to environmental and regulatory liability. This critical vendor category also includes third party storage providers that safeguard inventory, specifically feedstock inventory, against theft and contamination.

Paying the Vendor Claims will benefit the Debtors' estates, both monetarily and operationally, by preserving liquidity and allowing the Debtors to preserve asset values and maintain safe and compliant operations in compliance with relevant local, state, and federal guidelines, and efficiently administer the estate to explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders.

14. To maintain stability during these chapter 11 cases and to avoid jeopardizing the Debtors' operations going forward, the Debtors request authority, but not direction, to pay the Vendor Claims as they become due in the ordinary course of business, including claims on account of goods or services provided prepetition, in each case to the extent that the Debtors determine, in

their business judgment, that such payment is beneficial to the Debtors' estates. Moreover, the relief requested herein is necessary because many of the Critical Vendors may have no obligation to continue providing goods and services under relevant contracts, and, as a result, the Debtors would be unable to force those vendors to continue to perform under section 365 of the Bankruptcy Code. The Debtors do not seek authorization to honor prepetition obligations arising under contract, except where the Debtors determine, in their business judgment, such parties may be capable of terminating their contracts notwithstanding section 362(a) of the Bankruptcy Code or may otherwise inflict immediate and irreparable harm on the Debtors by their refusal to continue providing goods or services.

15. Finally, while the Debtors do not seek authority to honor such claims wholesale, the Debtors believe that certain of the Critical Vendors may be able to assert and perfect liens—including mechanics' liens, construction liens, materialman liens, warehouse liens, transportation and freight liens, and other similar liens—against assets owned or operated by the Debtors pursuant to applicable law, if the Debtors fail to pay for the goods or services rendered. And, the Debtors may have received certain goods or materials from certain Critical Vendors within the twenty-day period immediately preceding the Petition Date, thereby giving rise to claims potentially entitled to administrative expensive status under section 503(b)(9) of the Bankruptcy Code. The potential for these claims to be asserted against the estate provides additional justification and further solidifies the Debtors' business judgment in approving the Vendor Claims.

VI. Postpetition Continuation of Customary Trade Terms

16. Subject to the Court's approval, the Debtors intend to pay the Vendor Claims only to the extent necessary to preserve the value of their estates. To that end, in return for paying a portion of the Vendor Claims, the Debtors propose that they be authorized to require the Critical Vendors to provide favorable trade terms for the postpetition procurement of their services.

17. Specifically, the Debtors seek authority, but not direction, to condition payment of the Vendor Claims upon each Critical Vendor's (a) agreement to continue—or recommence—providing services to the Debtors in accordance with (i) normal and customary trade terms, practices and programs (including credit limits, pricing, timing of payments, availability, and other terms) that were most favorable to the Debtors as those in place during the twelve months prior to the Petition Date, or (ii) such other trade terms as agreed by the Debtors and such Critical Vendor that, in the reasonable judgment of the Debtors, are more favorable to the Debtors than the terms in the preceding clause (i) (collectively, the "Customary Trade Terms"), and (b) agreement that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such services to the Debtors during the course of these chapter 11 cases (*provided*, that the Debtors continue to pay for such work product and services and are not otherwise in breach of such contract or agreement). The Debtors also seek authorization to require, at their discretion, certain Critical Vendors to enter into a contractual agreement evidencing such Customary Trade Terms substantially in the form attached to the Motion as **Exhibit A** (the "Trade Agreement"). Where a Trade Agreement is required, the Debtors may include confidentiality protections to preserve commercial stability.

18. In addition, the Debtors request that if any Critical Vendor accepts payment pursuant to the relief requested by this Motion and thereafter ceases to provide goods or services in accordance with the Customary Trade Terms or as otherwise agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by that Critical Vendor shall be deemed, in the Debtors' sole discretion, a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such Critical

Vendor shall be reinstated as if the payment on account thereof had not been made; (c) if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor, (i) the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance, and (ii) such Critical Vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise; and (d) the Debtors may seek expedited relief and pursue any other remedy available to them under applicable law or any executed writing with such Critical Vendor.

Basis for Relief

I. The Court Should Authorize the Payment of Critical Vendor Claims.

19. Courts have repeatedly recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate and the value of its business as a going concern. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases."); *see also In re Scotia Dev., LLC*, Case No. 07-20027, 2007 WL 2788840, at *2 (Bankr. S.D. Tex. Sep. 21, 2007) (outlining the factors for when a critical vendor payment is necessary); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."). As set forth below, multiple provisions of the Bankruptcy Code support the payment of prepetition claims as provided herein.

20. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere*

Clubs, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). "The business judgment standard applies to transactions governed by 11 U.S.C. § 363," *In re Bouchard Trans. Co., Inc.*, 639 B.R. 697, 708 (S.D. Tex. 2022), *aff'd sub nom. Matter of Bouchard Trans. Co., Inc.*, 74 F.4th 743 (5th Cir. 2023), and "[w]here the debtor articulates a reasonable basis for its business decisions . . . courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

21. In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including the "implied duty of the debtor-in-possession to 'protect and preserve the estate, including an operating business' going-concern value.'" *See, e.g., In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *CoServ, L.L.C.*, 273 B.R. at 497).

22. Moreover, under section 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a); *CoServ, L.L.C.*, 273 B.R. at 497 ("These are simply examples of claims that may require satisfaction for the debtor in possession to perform its fiduciary obligations. In such instances it is only logical that the bankruptcy court be able to use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate."); *In re CEI Roofing, Inc.*, 315 B.R. at 56–57 (citing *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003)). No provision of the Bankruptcy Code expressly prohibits the postpetition payment of prepetition trade claims. Indeed, the above-

referenced sections of the Bankruptcy Code authorize such payments when the payments are critical to preserving the value of the debtor's estate, as is the case here.

23. Courts have also noted instances in which a debtor in possession can fulfill its fiduciary duties "only . . . by the preplan satisfaction of a prepetition claim." *CoServ, L.L.C.*, 273 B.R. at 497. The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty where such payment "is the only means to effect a substantial enhancement of the estate" or where a payment is made to the "sole suppliers of a given product." *Id.* at 497–98. Courts in the Fifth Circuit, including the Southern District of Texas, have followed *CoServ*'s three-part test to determine whether a prepetition claim of a "critical vendor" may be paid outside of the plan process on a postpetition basis:

> First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

CoServ, L.L.C., 273 B.R. at 498; *see also In re Scotia Dev., LLC*, 2007 WL 2788840, at *2; *In re Mirant Corp.*, 296 B.R. at 429–30.

24. Accordingly, courts in this jurisdiction regularly authorize the payment of critical vendor claims under sections 105(a) and 1107 of the Bankruptcy Code. *See CoServ, L.L.C.*, 273 B.R. at 496–97 (holding that a debtor in possession's duty to protect and preserve an operating business's going-concern value may require the preplan satisfaction of prepetition claims pursuant to section 105(a)); 11 U.S.C. § 1107 (codifying the duties of a debtor in possession); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000) (noting that the continuance of even insignificant customer business transactions can be "critical to the survival of the business" and failure to continue such transactions risks eroding the business's customer base and going

concern value); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 467–68 (2017) (noting that bankruptcy courts frequently approve critical vendor payments in furtherance of Bankruptcy Code-related objectives); *see also In re Party City Holdco Inc.*, Case No. 24-90621 (ARP) (Bankr. S.D. Tex. Dec. 23, 2024) [Docket No. 68] (authorizing payment of certain critical vendor claims on an interim basis in a wind down case); *In re DRF Logistics, LLC*, Case No. 24-90447 (CML) (Bankr. S.D Tex. Aug. 9, 2024) [Docket No. 56] (same); *In re Conn's Inc.*, Case No. 24-33357 (ARP) (Bankr. S.D. Tex Jul. 24, 2024) (same) [Docket No. 65.[3]

25. Each of the requirements cited by courts in support of the payment of critical vendor claims is met in this case, and the Debtors have a sound business purpose for the relief requested herein. The Debtors require a steady provision of goods and services provided by the Critical Vendors in order to preserve liquidity, stabilize operations, and maintain safe and compliant operations in compliance with relevant local, state, and federal guidelines.. Without such products and services, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers, and may have to forego existing favorable trade terms, thereby hindering the Debtors' ability to explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders. The authority to honor unpaid, prepetition Vendor Claims in the initial days of these chapter 11 cases will maintain the integrity of the Debtors' business, allow the Debtors to efficiently administer these chapter 11 cases, and maximize the value of their estates. If the Debtors are denied the relief requested herein, the resulting harm to the Debtors' estates far outweighs any costs associated with paying the Vendor Claims. Thus, the Debtors' other creditors will be no worse off, and likely fare better, if the Debtors are empowered to negotiate such payments to achieve a smooth transition into chapter 11

[3] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

with minimal disruptions. Accordingly, the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

II. Processing of Checks and Electronic Fund Transfers

26. The Debtors have sufficient unrestricted cash on hand to pay the amounts described in this Motion in the ordinary course of business by virtue of and consistent with the terms of the Cash Management Motion, filed contemporaneously herewith. Based on the cash management system, the Debtors can readily identify wire transfer requests as relating to an authorized payment in respect of the Vendor Claims. Accordingly, the Debtors believe there is minimal risk that ACH transfers or wire transfer requests the Court has not authorized will be made inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, ACH transfers, or wire transfer requests in respect of the relief requested in this Motion. Further, the Debtors also seek authority to issue new postpetition checks, wire transfers, or electronic fund transfer requests to replace any prepetition checks, wire transfers, or funds transfers that may be dishonored or rejected as a result of the commencement of these chapter 11 cases.

III. Emergency Consideration

27. Pursuant to Bankruptcy Local Rule 9013-1, the Debtors request emergency consideration of this Motion. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case if "relief is needed to avoid immediate and irreparable harm." FED. R. BANKR. P. 6003. Failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would imperil the Debtors' restructuring and cause irreparable harm. Further, this relief will save costs and avoid undue administrative

burden and confusion only if granted immediately. The Debtors therefore have satisfied the "immediate and irreparable harm" standard and request that the Court approve the Motion on an emergency basis.

IV. Waiver of Bankruptcy Rules 6004(a) and 6004(h)

28. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h) to the extent applicable.

V. Reservation of Rights

29. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission by the Debtors as to the amount of, basis for, or validity of any claim against any Debtor under the Bankruptcy Code or other applicable law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates (and the rights of all parties in interest are expressly reserved with respect to such liens); or (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not

intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

VI. Notice

30. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) the Banks (as defined in the Cash Management Motion); (d) counsel to certain Senior Secured Noteholders; (e) the United States Attorney's Office for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) other governmental or regulatory agencies having a regulatory or statutory interest in these cases; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

VII. Conclusion

The Debtors request that the Court enter the Interim Order and the Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 10, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: */s/ Ryan Manns*

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Ryan Manns
Ryan Manns

Certificate of Service

I certify that on April 10, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtors' proposed claims agent.

/s/ Ryan Manns
Ryan Manns

Exhibit A

Trade Agreement

TRADE AGREEMENT

Ascend Elements, Inc. and its debtor affiliates (collectively, the "Company"), on the one hand, and the vendor identified in the signature block below (the "Trade Claimant"), on the other hand, hereby enter into the following trade agreement (this "Trade Agreement") dated as of the latest date in the signature blocks below.

Recitals

WHEREAS, on April 9, 2026, the Company filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

WHEREAS, on [_], the Court entered the *Interim Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [Docket No. [•]] (the "Critical Vendor Order") authorizing, but not directing, the Debtors to, on an interim basis, pay certain prepetition claims of certain vendors, including the Trade Claimant, subject to the terms and conditions set forth therein.[1]

WHEREAS, prior to the Petition Date, the Trade Claimant delivered goods to the Company and/or performed services for the Company, and the Company paid the Trade Claimant for such goods and/or services, according to Customary Trade Terms (as defined in the Critical Vendor Order).

WHEREAS, the Company and the Trade Claimant (each a "Party," and collectively, the "Parties") agree to the following terms as a condition of payment on account of certain prepetition claims the Trade Claimant may hold against the Company.

Agreement

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. Trade Claimant Payment. The Trade Claimant represents and agrees that, after due investigation, the sum of all prepetition amounts currently due and owing by the Company to the Trade Claimant is $[•] (the "Agreed Trade Claimant Claim"). Following execution of this Trade Agreement, the Company shall provisionally pay the Trade Claimant $[•] on account of its Agreed Trade Claimant Claim (the "Trade Claimant Payment") (without interest, penalties, or other charges) (net of any setoffs, credits, or discounts, if applicable), which shall apply to reduce the Agreed Trade Claimant Claim dollar-for-dollar. If the Trade Claimant Payment is equal to the Agreed Trade Claimant Claim, then such Trade Claimant Payment shall be in full and final satisfaction of such Agreed Trade Claimant Claim. If the Trade Claimant Payment is less than the Agreed Trade Claimant Claim, the Trade Claimant shall apply payments first towards amounts owing giving rise to liens against the Debtors or their assets, then towards amounts owing giving rise to claims under section 503(b) of the Bankruptcy Code, then the Trade Claimant shall have a general unsecured claim equal to the difference between the Agreed Trade Claimant Claim and

[1] Capitalized terms used but not defined herein shall have the meanings set forth in the Critical Vendor Order.

the Trade Claimant Payment. For the avoidance of doubt, any amounts due and owing by the Company to the Trade Claimant for goods or services provided after the Petition Date shall be paid in the ordinary course with the Parties' Customary Trade Terms.

3. Agreement to Supply.

a. The Trade Claimant shall supply goods to and/or perform services for the Company, and the Company shall accept and pay for goods and/or services, as applicable, from the Trade Claimant (to the extent the Company seeks such goods and/or services), for [the duration of the Debtors' chapter 11 cases // [•] months] based on the following terms (collectively, the "Customary Trade Terms"): those trade terms that were the most favorable to the Company as those practices and programs (including, but not limited to, credit limits, pricing, cash discounts, the number of days for timing of payments and payment terms, allowances, as may be incorporated or contemplated by any agreements between the Parties or based on historical practice, as applicable, rebates, product mix, availability, and other applicable terms or programs) in place at any time within the twelve (12) months prior to the Petition Date, or are otherwise acceptable to the Company in light of customary industry practices, except for any partial payments or other payments (or assurances) the Company made with respect to any unfinished product and/or services. "Duration of the Debtors' chapter 11 cases" means the period beginning with the Petition Date and ending at the earlier of: (i) the effective date of a chapter 11 plan in the Debtors' chapter 11 cases; (ii) the closing of a sale of all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code that results in a cessation of the Debtors' business operations; or (iii) the liquidation of the Company or conversion of the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

b. The Customary Trade Terms may be modified, adjusted, or reduced by the Company without further order of the Court, but not in any way adverse to the Company.

c. The Trade Claimant shall continue to honor any existing allowances, rebates, credits, contractual obligations, or balances that were accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

d. The Trade Claimant shall continue all shipments of goods in the ordinary course of business, fill orders for goods requested by the Debtors in the ordinary course of business, and/or continue to provide services requested by the Company in the ordinary course of business, in each case pursuant to the Customary Trade Terms.

e. The Trade Claimant shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide services to the Debtors for [the duration of the Debtors' chapter 11 cases // [•] months].

4. Other Matters.

a. The Trade Claimant agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Debtors' chapter 11 cases on account of any outstanding administrative claims the Trade Claimant may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. The Trade Claimant agrees that such claims will be paid in the ordinary course of business after confirmation of a chapter 11 plan pursuant to the Customary Trade Terms then in effect, if the plan provides for the ongoing operations of the Company.

b. The Trade Claimant will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a chapter 11 plan confirmed in the Debtors' chapter 11 cases.

c. The Trade Claimant will not file or otherwise assert against the Company, its assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Trade Claimant by the Company arising from prepetition agreements or transactions. Furthermore, if the Trade Claimant has taken steps to file or assert such a lien prior to entering into this Trade Agreement, the Trade Claimant will immediately take all necessary actions to remove such liens and hereby authorizes the Debtors to take any such actions on its behalf.

d. The Trade Claimant has reviewed the terms and provisions of the Critical Vendor Order and consents to be bound by the same.

e. Each Party's rights are reserved with respect to any claims that the Trade Claimant may have arising under section 503(b)(9) of the Bankruptcy Code. For the avoidance of doubt, the Trade Claimant shall apply payments first towards amounts owing giving rise to liens against the Debtors or their assets, then towards amounts owing giving rise to claims under section 503(b) of the Bankruptcy Code.

f. Nothing herein waives any Party's rights under section 365 of the Bankruptcy Code.

5. Breach.

a. In the event that the Trade Claimant fails to satisfy its undisputed obligations arising under this Trade Agreement (a "Trade Claimant Breach"), upon written notice to the Trade Claimant, the Trade Claimant shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Trade Claimant Payment or any portion of the Trade Claimant Payment that

cannot be offset by the Company against the postpetition receivables then owing to the Trade Claimant from the Company.

b. The Trade Claimant agrees and acknowledges that irreparable damage would occur in the event of a Trade Claimant Breach and remedies at law would not be adequate to compensate the Company. Accordingly, the Trade Claimant agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions by motion to the Court (without, for the avoidance of doubt, any requirement that the Debtors commence an adversary proceeding pursuant to Bankruptcy Rule 7003), to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder, not only by an action or actions for damages, but also by an action or actions for specific performance, injunctive relief, and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. The Trade Claimant hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for specific performance, injunctive relief, or other equitable remedies.

6. Jurisdiction. Any Trade Claimant that accepts payments from the Company pursuant to the Critical Vendor Order is deemed to have voluntarily submitted itself to the jurisdiction of the Court.

7. Notice.

If to the Trade Claimant, then to the person and address identified in the signature block hereto.

If to the Company:

Ascend Elements, Inc.
134 Flanders Rd.
Westborough, MA 01581
Attn: Deacon Powell (dpowell@ascendelements.com)

with a copy to:

Norton Rose Fulbright US LLP
1550 Lamar Street, Suite 2000
Houston, Texas 77010
Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com)

8. Representations and Acknowledgements. The Parties agree, acknowledge, and represent that:

a. the Parties have reviewed the terms and provisions of the Critical Vendor Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Critical Vendor Order;

b. any payments made on account of the Agreed Trade Claimant Claim shall be subject to the terms and conditions of the Critical Vendor Order and this Trade Agreement;

c. if the Trade Claimant refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under this Trade Agreement, the Critical Vendor Order, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event no action may be taken by either Party, including, but not limited to, discontinuing shipment of goods or provision of services, as applicable, from the Trade Claimant to the Company, until a ruling of the Court is obtained.

9. Confidentiality. In addition to any other obligations of confidentiality between the Trade Claimant and Company, the Trade Claimant agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the "Confidential Information"); provided, that if any party seeks to compel the Trade Claimant's disclosure of any or all of the Confidential Information, through judicial action or otherwise, or the Trade Claimant intends to disclose any or all of the Confidential Information pursuant to any applicable statutory obligations, the Trade Claimant shall immediately provide the Debtors with written notice so that the Company may seek an injunction, protective order, or any other available remedy to prevent such disclosure; provided, further, that if such remedy is not obtained, the Trade Claimant shall furnish only such information as the Trade Claimant is legally required to provide.

10. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Party; (ii) they have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind the respective Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them.

c. This Trade Agreement cannot be changed, modified, amended, or supplemented unless an amendment is executed by each of the Parties hereto.

d. Signatures by facsimile or electronic signatures shall have the same effect as original signatures for all purposes.

e. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

f. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement; provided, that the Company shall have the right to enforce this Trade Agreement, including by seeking an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement, in any jurisdiction.

g. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature Page Follows]

AGREED AND ACCEPTED AS OF THE LATEST DATE SET FORTH BELOW:

[DEBTOR ENTITY]	**[TRADE CLAIMANT ENTITY]**
By: [•]	By: [•]
Title: [•]	Title: [•]
Date: [•]	Date: [•]

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[1]	)	Case No. 26-90440
Debtors.	)	(Joint Administration Requested)

INTERIM ORDER
(I) AUTHORIZING THE DEBTORS
TO PAY CERTAIN PREPETITION
CLAIMS OF CRITICAL VENDORS, AND (II) GRANTING RELATED RELIEF

Upon the emergency motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (this "Interim Order"), (a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of Critical Vendor Claims and (b) granting related relief, all as more fully set forth in the Motion and the First Day Declaration; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas, entered May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The final hearing (the "Final Hearing") on the Motion shall be held on [•] at _:_ _.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on [•]. In the event no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the Final Hearing.

2. The Debtors are authorized, but not directed, subject to this Interim Order, in the reasonable exercise of their business judgment, in an amount not to exceed $1.35 million in the aggregate during the Interim Period prior to entry of the Final Order, to honor, pay all or part of, and otherwise satisfy and discharge, on a case-by-case basis and consistent with their prepetition practices, the Vendor Claims each on an interim basis and in accordance with the amounts described in the Motion without further order of the Court. Payment of Vendor Claims in excess of $10,000 shall require consent of the Senior Secured Noteholders.

3. In the event the Debtors expect to exceed the amounts set forth in paragraph 1 of this Interim Order during the Interim Period before entry of the Final Order, with the consent of the Senior Secured Noteholders, the Debtors shall file a notice with the Court describing the

overage amount and any party in interest shall have the right to object in this Court to the Debtors paying such additional amounts, subject to the rights of the Debtors to oppose any such action. If no objections are filed with the Court and served on the Debtors within five business days of the filing of such notice, such overage shall be authorized to be paid without further order of the Court.

4. As a condition to receiving payment under this Interim Order, a Critical Vendor, in the Debtors' discretion, shall (a) agree to continue or recommence supplying services to the Debtors consistent with the Customary Trade Terms and (b) agree that it shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which it provides such services to the Debtors during the course of these chapter 11 cases (provided that the Debtors continue to pay for such services and are not otherwise in breach of such contract or agreement).

5. The form of Trade Agreement, substantially in the form attached to the Motion as **Exhibit A** is approved in its entirety. The Debtors are authorized to enter into Trade Agreements with Critical Vendors, in their discretion subject to the consent of the Senior Secured Noteholders. To the extent that the Debtors do not enter into a Trade Agreement with a Critical Vendor, such Critical Vendor's acceptance of payment on account of its Vendor Claim shall be deemed as the Critical Vendor's agreement to continue providing goods and services on Customary Trade Terms. Any party that accepts payment from the Debtors on account of a Vendor Claim during the Interim Period shall be provided with a copy of this Interim Order. The Debtors are authorized to negotiate, modify, or amend the form of the Trade Agreement in the exercise of their reasonable business judgment, subject to the consent of the Senior Secured Noteholders, to the extent such negotiations, modifications, or amendments are not materially adverse to the Debtors in the aggregate (provided that any such modification or amendment must require the Critical Vendor to provide the trade terms set forth above) and to settle all or some of the Vendor Claims for less than

the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment.

6. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Critical Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Critical Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

7. If a Critical Vendor accepts payment hereunder for a prepetition obligation of the Debtors, and the party thereafter fails to provide goods or services in accordance with the Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such Critical Vendor may be deemed, in the Debtors' sole discretion, a voidable postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such Critical Vendor shall be reinstated as if the payment had not been made; and the deadline for such party to file a reinstated claim will be the later of (i) the general bar date established by order of this Court or (ii) 30 days after the Debtors provide written notice to the party of the reinstatement of its claim; (c) if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor, (i) the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance, and (ii) such Critical Vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise; and (d) the Debtors may pursue any other remedy available to them under applicable law or any executed writing with such Critical Vendor.

8. Any party that accepts payment from the Debtors on account of all or a portion of a Vendor Claim shall be deemed to (a) have agreed to the terms and provisions of this Interim Order, (b) have submitted to the jurisdiction of this Court for the enforcement thereof, and (c) have waived, to the extent so paid, Vendor Claims of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

10. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

12. During the Interim Period, the Debtors shall not pay any obligations under this Interim Order unless they are due or are deemed necessary to be paid in the Debtors' business judgment, and with the consent of the Senior Secured Noteholders where required, to ensure the ongoing provision of goods or services or otherwise to avoid an adverse effect on the Debtors' operations.

13. Nothing in the Motion or this Interim Order, nor the Debtors' implementation of the relief granted in this Interim Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Critical Vendors, including the Debtors' rights to (a) cancel a purchase order, (b) decline the acceptance of goods and/or services, (c) return any defective, nonconforming or unacceptable goods, or (d) contest the amount of any invoice or claim on any grounds.

14. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

15. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, and subject to the administrative status afforded pursuant to this Interim Order, nothing in this Interim Order shall be deemed: (a) an admission by the Debtors as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) an impairment or waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are

valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003.

17. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, a "CC Order"), including, for the avoidance of doubt, any budget and the terms of any definitive documentation in connection therewith (the "CC Documents"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of the Motion or this Interim Order and the terms of any CC Order or any CC Documents, the terms of the CC Order or such CC Document, as applicable, will govern.

18. The Debtors shall maintain a matrix or schedule of payments made pursuant to this Order that includes the following information: (a) the name of the payees; (b) the date of the payment; (c) the amount of the payment; (d) the category or type of payment; and (e) the Debtor or Debtors that made the payment. On the last business day of each month, following entry of this Order, and ending upon entry of an order confirming a plan or dismissing or converting the Chapter 11 Cases, the Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, counsel to certain Senior Secured Noteholders, and any statutory committee appointed in the Chapter 11 Cases covering all payments made pursuant to this Order during the prior month.

19. For the avoidance of doubt, this Interim Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

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

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

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

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

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[3]	)	Case No. 26-90440
Debtors.	)	(Joint Administration Requested)

FINAL ORDER
(I) AUTHORIZING THE DEBTORS
TO PAY CERTAIN PREPETITION
CLAIMS OF CRITICAL VENDORS, (AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[4] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of a final order (this "Final Order"), (a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of Critical Vendor Claims, and (b) granting related relief, all as more fully set forth in the Motion and the First Day Declaration; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas, entered May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the

[3] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[4] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, subject to this Final Order, in the reasonable exercise of their business judgment, and in the reasonable exercise of their business judgment, in an amount not to exceed $1.35 million in the aggregate on a final basis to honor, pay all or part of, and otherwise satisfy and discharge, on a case-by-case basis and consistent with their prepetition practices, the Vendor Claims inclusive of amounts paid during the Interim Period and in accordance with the amounts described in the Motion without further order of the Court. Payment of Vendor Claims in excess of $10,000 shall require consent of the Senior Secured Noteholders.

2. As a condition to receiving payment under this Final Order, a Critical Vendor shall (a) agree to continue or recommence supplying services to the Debtors consistent with the Customary Trade Terms and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such services to the Debtors during the course of these chapter 11 cases (provided that the Debtors continue to pay for such services and are not otherwise in breach of such contract or agreement).

3. The form of Trade Agreement, substantially in the form attached to the Motion as **Exhibit A** is approved in its entirety. The Debtors are authorized to enter into Trade Agreements with Critical Vendors, in their discretion subject to the consent of the Senior Secured Holders. To the extent that the Debtors do not enter into a Trade Agreement with a Critical Vendor, such Critical Vendor's acceptance of payment on account of its Vendor Claim shall be deemed as the Critical Vendor's agreement to continue providing goods and services on Customary Trade Terms. Any party that accepts payment from the Debtors on account of a Vendor Claim following the entry of this Final Order shall be provided with a copy of this Final Order. The Debtors are authorized to negotiate, modify, or amend the form of the Trade Agreement, and with the consent of the Senior Secured Holders, to the extent such negotiations, modifications, or amendments are not materially adverse to the Debtors in the aggregate (provided that any such modification or amendment must require the Critical Vendor to provide the trade terms set forth above) and to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment.

4. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Critical Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Critical Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

5. If a Critical Vendor accepts payment hereunder for a prepetition obligation of the Debtors, and the party thereafter fails to comply to provide goods or services in accordance with the Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such Critical Vendor may be deemed, in the Debtors' sole discretion, a voidable postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by

the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such Critical Vendor shall be reinstated as if the payment had not been made; (c) if there exists an outstanding postpetition balance due from the Debtors to such Critical Vendor, (i) the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance, and (ii) such Critical Vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise; and (d) the Debtors may pursue any other remedy available to them under applicable law or any executed writing with such Critical Vendor.

6. Any party that accepts payment from the Debtors on account of all or a portion of a Vendor Claim shall be deemed to (a) have agreed to the terms and provisions of this Final Order and (b) have waived, to the extent so paid, Vendor Claims of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors'

designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. Nothing in the Motion or this Final Order, nor the Debtors' implementation of the relief granted in this Final Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Critical Vendors, including the Debtors' rights to (a) cancel a purchase order, (b) decline the acceptance of goods and/or services, (c) return any defective, nonconforming or unacceptable goods, or (d) contest the amount of any invoice or claim on any grounds.

11. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

12. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, and subject to the administrative status afforded pursuant to this Final Order, nothing in this Final Order shall be deemed: (a) an admission by the Debtors as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) an impairment or waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or

any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003.

14. Notwithstanding anything to the contrary contained in the Motion and this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, a "CC Order"), including, for the avoidance of doubt, any budget and the terms of any definitive documentation in connection therewith (the "CC Documents"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Motion and Order and the terms of any CC Order or any CC Documents, the terms of the CC Order or such CC Document, as applicable, will govern.

15. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Final Order, including the following information: (a) the names of the payee; (b) the nature, date, and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to certain Senior Secured Noteholders, and any statutory committee appointed in these chapter 11 cases every thirty days beginning upon entry of this Final Order and ending upon entry of an order confirming a plan or dismissing or converting these chapter 11 cases.

16. For the avoidance of doubt, this Final Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

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

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

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

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