

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of August 20, 2009, by and among Qimonda Richmond, LLC, a Delaware limited liability company (“Qimonda Richmond” or “Seller”), and Texas Instruments Incorporated, a Delaware corporation (“Buyer”).

**BACKGROUND**

WHEREAS, on February 20, 2009 (the “Petition Date”), Seller filed a voluntary petition for relief (the “Bankruptcy Case”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 09-10589 (MFW), jointly administered;

WHEREAS, Seller continues to operate as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on July 21, 2009, the Bankruptcy Court entered its Order Granting Debtors’ Motion, Pursuant to Sections 105(a), 105(d) and 363(b) of the Bankruptcy Code, for Entry of an Order Approving Bidding Protection Procedures and Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors (the “Sales Procedures Order”);

WHEREAS, subject to the terms and conditions of this Agreement and the Sales Procedures Order, Seller desires to sell and transfer, and Buyer desires to purchase and acquire, the Assets (as defined below);

WHEREAS, the Assets are located on or about the premises owned and operated by Seller at 6000 Technology Boulevard, Sandston, Virginia (together with all related facilities infrastructure, systems and utilities, the “Premises”).

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
PURCHASE AND SALE**

1.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement and the entry of the Sale Order (as defined below), at the Closing Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, receive and assume, all right, title and interest of Seller in, to and under the Assets, free and clear of all mortgages, liens (including judicial and statutory liens), security interests, encumbrances, claims (including options and rights of first refusal), charges, pledges, hypothecations, covenants, interests and restrictions of any kind or character (collectively, “Encumbrances”) pursuant to Sections 363(b) and (f) of the Bankruptcy Code.

1.2 Excluded Assets. Without limitation, except for the Assets, Buyer will not acquire, in connection with the transactions contemplated by this Agreement, any assets or properties of Seller whatsoever, whether real or personal, tangible or intangible.

1.3 No Assumption of Liabilities by Buyer. Buyer does not assume and shall not assume any debt, obligation, lease or any other liability or obligation of Seller, or its subsidiaries, affiliates or owners, of any kind or nature whatsoever, absolute or contingent, known or unknown, whether such liability or obligation arose prior to, on or after the Closing (collectively, the “Excluded Liabilities”).

## ARTICLE II PURCHASE PRICE

### 2.1 Purchase Price.

(a) Purchase Price for Assets. Subject to the terms and conditions of this Agreement, as full consideration for the Assets, at the Closing, Buyer shall pay to Seller the aggregate amount of One Hundred Seventy Two Million Five Hundred Thousand Dollars (\$172,500,000), subject to the Adjustment Mechanism (the “Purchase Price”), as provided below.

(b) Deposit Amount. Simultaneously with the execution of this Agreement, Buyer shall deliver to Wilmington Trust Company (the “Escrow Agent”) a deposit in the amount of Seventeen Million Two Hundred Fifty Thousand Dollars (\$17,250,000), subject to the Adjustment Mechanism, in immediately available funds (the “Deposit”) to be held by the Escrow Agent in an interest bearing account as specified in the Deposit Escrow Agreement, executed by Buyer, Seller and the Escrow Agent simultaneously with the execution of this Agreement (the “Deposit Escrow Agreement”), to serve as an earnest money deposit under this Agreement, and to be released in accordance with the following procedures.

(i) Deposit Instructions. At Closing, Seller and Buyer shall jointly instruct the Escrow Agent to deliver the Deposit, by wire transfer of immediately available funds, to an account designated by Seller in the Deposit Escrow Agreement (and such amount shall be applied towards the payment of the Purchase Price). The costs and expenses of the Escrow Agent to establish the escrow pursuant to the Deposit Escrow Agreement and those costs and expenses that are ordinarily recurring in nature will be paid solely by the party to whom the Deposit is paid pursuant to this Section 2.1(b).

(ii) Termination of Agreement by Reason of Buyer Material Breach. If Seller terminates this Agreement pursuant to Section 8.1(h), then the Deposit shall be delivered to Seller as provided in the Deposit Escrow Agreement.

(iii) Termination of Agreement for Other Reasons. If this Agreement is terminated for any reason whatsoever other than that stated in Section 2.1(b)(ii), then the Deposit will be returned to Buyer as provided in the Deposit Escrow Agreement.

(c) Remaining Purchase Price Payable at Closing. At the Closing, Buyer shall pay to Seller an amount equal to (i) the Purchase Price, subject to the Adjustment Mechanism,

minus (ii) the Deposit, subject to the Adjustment Mechanism, minus (iii) the Estimated Tax Adjustment Amount if Buyer is due an Estimated Tax Adjustment Amount (as defined in Section 6.8(b)(iv)), plus (v) the Estimated Tax Adjustment Amount if Seller is due an Estimated Tax Adjustment Amount (the amount resulting from such calculation being referred to as the “Remaining Purchase Price”), in immediately available funds by wire transfer to Seller’s account pursuant to instructions to be delivered to Buyer in advance of the Closing or as the Sale Order may otherwise direct.

**ARTICLE III  
THE CLOSING**

3.1 Time and Place of the Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 at 10:00 a.m., Eastern time, on the second (2nd) business day after the conditions to Closing set forth in Article VII (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the party entitled to waive such condition), or at such other place, date and time as the parties may agree in writing (the “Closing Date”).

3.2 Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, the following to Buyer:

(a) a counterpart of the Bill of Sale and Assignment Agreement substantially in the form attached hereto as Exhibit D (the “Bill of Sale”), and such other instruments of conveyance reasonably necessary for the transfer of the Assets (subject to the Adjustment Mechanism) duly executed by Seller;

(b) a true and correct copy of the filed Sale Order as entered by the Bankruptcy Court;

(c) a certificate of an officer of Seller certifying that the closing conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied;

(d) all Documents of Title (as defined in the Uniform Commercial Code) issued to Seller with regard to the Assets, or a letter agreement from Seller to Buyer to exercise commercially reasonable efforts to deliver such Documents of Title to all such Assets within twenty (20) days after Closing;

(e) Passkeys, codes and other items necessary to give Buyer access to the Premises to enable it to commence removal of the Assets in accordance with this Agreement; and

(f) all such other agreements, documents and instruments as may be reasonably required by Buyer to complete the transactions provided for in this Agreement.

3.3 Deliveries by Buyer. At the Closing, Buyer shall deliver, or cause to be delivered, the following to Seller:

- (a) the Remaining Purchase Price by wire transfer of immediately available funds to Seller's account;
- (b) a counterpart of the Bill of Sale, duly executed by Buyer;
- (c) a certificate of an officer of Buyer certifying that the closing conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied;
- (d) all such other agreements, documents and instruments as may be reasonably required by Seller to complete the transactions provided for in this Agreement; and
- (e) Commonwealth of Virginia Sales and Use Tax Certificate of Exemption Forms ST-10, ST-11B and ST-11, in respect of the transactions contemplated by this Agreement.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Subject to the exceptions noted on the disclosure schedule attached hereto, as a material inducement to Buyer to execute and perform its obligations under this Agreement, Seller represents and warrants to Buyer, as of the date hereof and as of the Closing, as follows:

4.1 Organization and Good Standing. Qimonda Richmond is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Subject to the limitations imposed on Seller as a result of having filed a petition for relief under the Bankruptcy Code, or pursuant to any order entered by the Bankruptcy Court, Seller has full entity power and authority to conduct the Business as it is presently being conducted and to own, operate and lease its properties and assets. Seller is duly qualified to do business, and is in good standing, in each jurisdiction in which the character or location of the property owned, leased or operated or the nature of the business conducted makes such qualification necessary, except where the failure to be qualified or in good standing will not have a material adverse effect on the Assets or the Seller's ability to consummate the transactions contemplated hereunder.

4.2 Authorization. Subject to the entry of the Sale Order and, with respect to Seller's obligations under Section 6.7(a), the entry of the Stalking Horse Order (as defined below), Seller has the requisite power and authority to execute this Agreement and the other agreements, instruments and certificates to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the "Seller Ancillary Documents"), to perform its obligations under such agreements, and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order, the execution and delivery by Seller of this Agreement and the Seller Ancillary Documents and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate and other organizational action on the part of Seller. This Agreement and the Seller Ancillary Documents have been duly executed and delivered by Seller and, assuming the execution and delivery by Buyer and the entry of the Sale Order, and, with respect to Seller's obligations under Section 6.7(a), the entry of the Stalking Horse Order, constitute valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except the availability of the remedy of specific performance or injunctive or other forms

of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceedings therefor may be brought.

4.3 No Violation; Consents. Upon or after the entry and effectiveness of the Sale Order, the execution and delivery of this Agreement and the Seller Ancillary Documents and the performance of Seller's obligations herein or therein will not (i) conflict with or result in any breach of any provision of the organizational documents of Seller, (ii) violate any applicable foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement enacted, promulgated, issued or entered by a governmental authority (collectively, "Law"), (iii) subject to any compliance with the HSR Act (as defined below), require any consent, approval, authorization or permit of, or filing with or notification to, any governmental authority or other Person which has not otherwise been obtained or made, or (iv) result in the imposition of any Encumbrances upon the Assets, except as are excused by or unenforceable as a result of the filing of the Bankruptcy Case or the applicability of any provision of, or any Law under, the Bankruptcy Code.

4.4 Title to the Assets. Seller is the sole and lawful owner of, and holds good and marketable title to, the Assets listed on Exhibit A, excluding the Assets listed on Exhibit A-2. Subject to the Adjustment Mechanism, at or before Closing Seller will be the sole and lawful owner of, and will hold good and marketable title to, the Assets listed on Exhibit B. At the Closing, subject to the Adjustment Mechanism, Buyer will receive good and marketable title to the Assets, free and clear of all Encumbrances as permitted under Sections 363(b) and 363(f) of the Bankruptcy Code and subject to the entry of the Sale Order.

4.5 Permits. Set forth on Schedule 4.5 is a list of each material Permit (as defined in Exhibit A) relating to the Assets issued by any governmental authority to Seller, and Seller has not received any notice of any proceeding relating to the revocation or modification of any such Permit. To Seller's Knowledge (as defined below), no condition exists and no event has occurred which might reasonably be expected to cause the revocation of any material Permit. Except for the Permits listed in Schedule 4.5, to Seller's Knowledge, no material Permit is required from any governmental authority for Seller to own and operate the Assets or otherwise to operate the Business as it was conducted immediately before the filing of the Bankruptcy Case.

4.6 [Intentionally Omitted]

4.7 Compliance with Law. Seller is, to the extent related to the Assets, in compliance in all material respects with all applicable Laws and, to Seller's Knowledge, no condition exists which, with or without notice or passage of time or both, shall cause Seller not to remain in compliance. Seller has received no notification and has no Knowledge that any notification could be forthcoming from any governmental authority relating to the Assets: (i) asserting that Seller is not in compliance with any applicable Laws, (ii) threatening to revoke any material Permit relating to the Assets, or (iii) notifying Seller of any investigation by any such governmental authority.

4.8 Litigation. There are no private or governmental actions, suits, proceedings, claims, arbitrations, judgments or decrees or, to Seller's Knowledge, investigations pending

against Seller or, to Seller's Knowledge, affecting Seller or the Assets, which (i) contest or challenge Seller's authority, right or ability to perform its obligations under this Agreement or any of the Seller Ancillary Documents, as applicable, (ii) challenge Seller's right, title or ownership in any of the Assets, or (iii) would impair or have an adverse effect on Buyer's right or ability to own, use, commercialize or otherwise exploit any of the Assets, or impair or have an adverse effect on the value of any of the Assets following the Closing. To Seller's Knowledge, there are no proceedings threatened that assert any claim described in clauses (i), (ii) or (iii) of the preceding sentence; provided, however, that if after the date hereof, any action, suit, proceeding, claim, arbitration, judgment decree or investigation described in clause (i), (ii) or (iii) is asserted, instituted or entered, then the representation contained in the first sentence of this Section 4.8 shall be deemed accurate as of the Closing Date so long as an order has been issued by the Bankruptcy Court rejecting, disallowing or dismissing such action, suit, proceeding, claim, arbitration, judgment decree or investigation, no appeal or motion for reconsideration of that order has been filed and the time for filing such motion and an appeal has expired. Except for orders entered in the Bankruptcy Case that do not have an adverse effect on the Assets or on Seller's ability to consummate the transactions contemplated hereunder, there are no judgments, decrees, injunctions or orders of any court, governmental authority, arbitrator or mediator pending or binding against Seller or the Assets.

4.9 Insurance. Schedule 4.9 lists all insurance policies insuring the Assets, including the policy numbers, expiration dates, premium payment schedules, and the coverage limitations and amounts of any deductibles with respect to such insurance policies. Such insurance policies are in full force and effect for such amounts and are sufficient for material compliance with all legal requirements and of all agreements to which Seller is a party or by which it is bound. No event has occurred which limits or impairs the rights of Seller under any such insurance policies. Schedule 4.9 sets forth all claims Seller has made under the insurance policies referred to herein within the last twelve (12) months.

4.10 Rights of Seller's Parent Companies. Neither Qimonda AG, Qimonda Holding BV, nor Qimonda North America Corp., nor any entity directly or indirectly controlled by any of them, nor Infineon Technologies AG (all of such foregoing entities being collectively referred to as "Seller's Parent Entities"), has asserted any claim or cause of action that it has any right title or interest in or to any of the Assets; provided, however that if after the date hereof, any such claim or cause of action is asserted, this representation shall be deemed accurate as of the Closing Date so long as an order has been issued by the Bankruptcy Court rejecting, disallowing or dismissing such claim or cause of action, no appeal or motion for reconsideration of that order has been filed and the time for filing such motion and an appeal has expired. To Seller's Knowledge, Seller's Parent Entities have no right, title or interest in or to any of the Assets.

4.11 Subsidiaries. Seller does not hold a direct or indirect equity interest in any Person.

4.12 Environmental Safety and Health. Seller's use of the Assets has complied in all material respects and is in compliance in all material respects with all Laws concerning public health or safety, worker health or safety, or pollution or protection of the environment as the foregoing are enacted or in effect ("Environmental Laws") and Seller holds and is in compliance in all material respects with, all environmental Permits necessary for the Assets as now utilized.

Within the last 12 months, Seller has not received any written notice, claim, or report relating directly to the Assets regarding any violation or alleged violation by Seller of, or liability or alleged liability of Seller, under Environmental Laws.

4.13 Financial Advisors. Except as set forth on Schedule 4.13, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated hereunder. Buyer is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated hereunder based upon any arrangement made by or on behalf of Seller.

4.14 No Other Representations or Warranties. Except as expressly set forth in this Agreement and the Seller Ancillary Documents, none of Seller or any agent, employee, attorney or other representative of Seller or purporting to represent Seller, makes any representation or warranties, express or implied, of any kind whatsoever to Buyer with respect to the Assets or otherwise, including, without limitation, the maintenance, repair, condition, quality, design, marketability, accuracy, utility or completeness of the equipment, and Seller expressly disclaims as it pertains to Buyer (1) any implied or express warranty of merchantability, (2) any implied or express warranty of fitness for a particular purpose, or (3) any implied or express warranty of conforming to models or samples with respect to any of the foregoing. For the avoidance of doubt, except as set forth in this Agreement or the Seller Ancillary Documents, no warranty or representation is given on the contents of the documents provided in due diligence, on any other documents or other information not contained in this Agreement, all of which were produced only for information purposes.

4.15 No Inducement or Reliance; Independent Assessment. With respect to the Assets or any other rights to be transferred hereunder, Seller acknowledges it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Buyer or any agent, employee, attorney or other representative of Buyer representing or purporting to represent Buyer that are not expressly set forth herein (including the exhibits hereto), whether or not any such representations, warranties or statements were made in writing or orally, and Seller acknowledges that none of Buyer, nor any agent, employee, attorney, other representative of Buyer or other Person will have or be subject to any liability to Seller or any other Person resulting from the distribution to Seller, or Seller's use of, any such information, including any information, documents or material made available to Seller in expectation of the transactions contemplated by this Agreement. For purposes of clarification, this Section 4.15 shall not in any way limit any representation, warranty or statement of Buyer made in this Agreement or in any document or instrument delivered to Seller pursuant to this Agreement.

4.16 Virginia Sales and Use Taxes. To the Knowledge of the Seller, the Company does not have any outstanding liabilities for accrued but unpaid Commonwealth of Virginia sales or use taxes in excess of \$50,000 as of the Closing Date.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF BUYER**

As of the date hereof and as of the Closing, as a material inducement to Seller to execute and perform its obligations under this Agreement, Buyer represents and warrants to Seller as follows as of the date hereof and as of the Closing:

5.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has full corporate power and authority to conduct its business as it is presently being conducted and to own, operate and lease its properties and assets.

5.2 Authorization. Buyer has the requisite power and authority to execute this Agreement and the other agreements, instruments and certificates to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the “Buyer Ancillary Documents”), to perform its obligations under such agreements, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Buyer Ancillary Documents and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement and the Buyer Ancillary Documents have been duly executed and delivered by Buyer and, assuming the execution and delivery by Seller and the entry of the Sale Order, constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceedings therefor may be brought.

5.3 No Violation; Consents. The execution and delivery of this Agreement and the Buyer Ancillary Documents and the performance of Buyer’s obligations herein or therein will not (i) conflict with or result in any breach of any provision of the organizational documents of Buyer, (ii) conflict with, require the consent of a third party under, violate, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of Buyer under any material agreement or other instrument to which Buyer is a party or by which Buyer or any of its properties or assets are bound, (iii) violate any applicable Law, or (iv) subject to compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), require any consent, approval, authorization or permit of, or filing with or notification to, any governmental authority or other Person which has not otherwise been obtained or made.

5.4 Litigation. Other than in or pursuant to the Bankruptcy Case, there are no private or governmental actions, suits, proceedings, claims, arbitrations or investigations pending or, to Buyer’s knowledge, threatened against Buyer that, if finally determined adversely, would be reasonably likely to have a material adverse effect on Buyer’s ability to consummate the transactions contemplated by this Agreement. Other than in or pursuant to the Bankruptcy Case, there are no judgments, decrees, injunctions or orders of any court, governmental authority, arbitrator or mediator pending or binding against Buyer which shall have a material adverse effect on Buyer’s ability to consummate the transactions contemplated by this Agreement.



5.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated hereunder and Seller is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated hereunder based upon any arrangement made by or on behalf of Buyer.

5.6 No Inducement or Reliance; Independent Assessment. With respect to the Assets or any other rights to be transferred hereunder, Buyer acknowledges it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee, attorney or other representative of Seller representing or purporting to represent Seller that are not expressly set forth herein (including the exhibits hereto), whether or not any such representations, warranties or statements were made in writing or orally, and Buyer acknowledges that none of Seller, nor any agent, employee, attorney, other representative of Seller or other Person will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any such information, including any information, documents or material made available to Buyer in expectation of the transactions contemplated by this Agreement. For purposes of clarification, this Section 5.6 shall not in any way limit any representation, warranty or statement of Seller made in this Agreement or in any document or instrument delivered to Buyer pursuant to this Agreement.

5.7 No Projections. Buyer acknowledges that neither Seller nor any of its affiliates has made any warranty, express or implied, as to the performance, utility or prospects, financial or otherwise, or the profitability of the Assets for Buyer, or with respect to any forecasts, projections or business plans prepared by or on behalf of Seller and delivered to Buyer in connection with Buyer's review of the Assets and the negotiation and the execution of this Agreement.

5.8 Financing. Buyer has and will have on the Closing Date sufficient cash and cash equivalents and/or existing credit facilities with sufficient borrowing capacity thereunder (and has provided Seller with satisfactory evidence thereof) to purchase the Assets and to consummate the transactions contemplated by this Agreement.

5.9 Buyer's Investigation. Buyer represents that it is a sophisticated entity that was advised by knowledgeable counsel and other advisors and hereby acknowledges that it has conducted an investigation of the Assets. Notwithstanding the foregoing, this Section 5.9 does not limit any representation or warranty made by Seller in this Agreement or any document or instrument delivered to Buyer pursuant to this Agreement.

5.10 No Other Representations and Warranties. Except as expressly set forth in this Agreement and the Buyer Ancillary Documents, neither Buyer nor any agent, employee, attorney or representative of Buyer or purporting to represent Buyer makes any representations or warranties, express or implied, of any kind whatsoever.

**ARTICLE VI  
COVENANTS OF THE PARTIES**

6.1 Access. Prior to the Closing and during the Removal Period (as defined below), Seller shall permit Buyer and its respective affiliates, officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives (collectively, “Representatives”) to have reasonable access, prior to Closing, during normal business hours and upon reasonable advance notice and, during the Removal Period, during extended hours as further set forth on Exhibit G hereto, to the personnel of Seller and, to the extent related to the Assets, the properties, books and records of Seller, and Seller will furnish such additional information relating to the Assets as Buyer may from time to time reasonably request; provided that, subject to the requirements set forth on Exhibit G, such access does not unreasonably interfere with the operations of the Business or the possible sale thereof to any other Person; and provided further that no information or knowledge obtained by Buyer and its Representatives pursuant to this Section 6.1 shall affect or be deemed to modify any representation or warranty made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement. Buyer shall abide by the terms of that certain Confidentiality Agreement, dated April 22, 2009, by and among Seller and Buyer (the “Confidentiality Agreement”) and any safety rules or rules of conduct reasonably imposed by Seller with respect to such access and any information furnished to Buyer or its Representatives pursuant to this Section 6.1.

6.2 Seller’s Operation of the Business. From the date hereof, Seller shall, and shall cause its Representatives to, (a) keep the Premises and the Assets intact and maintain the Premises and the Assets until the end of the Removal Period in accordance with the Tool Removal and Maintenance Procedures set forth on Exhibit G attached hereto, (b) not sell, transfer, pledge or grant a license or a security interest in, or otherwise dispose or encumber, any of the Assets, (c) not remove any of the Assets from the Premises prior to the end of the Removal Period, (d) maintain all insurance policies, as set forth in Section 6.12(f), on the Premises and the Assets until the Closing Date (and, if requested, will provide Buyer with satisfactory evidence thereof), (e) continue to provide and pay for all utilities, maintenance and other services until the end of the Removal Period (as defined below) in accordance with the Tool Removal and Maintenance Procedures set forth on Exhibit G attached hereto, and (f) not take any action inconsistent with Seller’s obligations under this Agreement, in each case, subject to such obligations, limitations or restrictions imposed by the Bankruptcy Code and the Bankruptcy Court.

6.3 Cooperation Toward Closing. From the date hereof until the Closing Date, subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective the sale of the Assets in accordance with this Agreement and the Sale Order, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to such party’s obligations hereunder.

6.4 Consents. On or prior to the Closing Date, Seller shall use commercially reasonable efforts, and Buyer shall reasonably cooperate with Seller, to obtain at the earliest

practical date all material consents, waivers and approvals required to consummate the transactions contemplated by this Agreement.

6.5 Hart-Scott-Rodino. With respect to the transactions contemplated by this Agreement, the parties hereto shall file or cause to be filed, promptly but in no event later than ten (10) business days immediately following the entry of the Stalking Horse Order, (a) any notifications required to be filed under the HSR Act and shall request early termination of the waiting period under the HSR Act; and (b) any pre-acquisition filings required by any foreign countries. Buyer shall be responsible for and pay all filing fees associated with such notifications and filings.

6.6 Compliance with Antitrust Laws and Government Requests. Subject to the terms and conditions herein, each of the parties hereto agrees to use its commercially reasonable efforts to take, or cause to be taken, all actions necessary to expeditiously consummate the transactions contemplated by this Agreement, including using commercially reasonable efforts to respond promptly to government requests for information and obtain all necessary governmental, judicial or regulatory actions or non-actions, orders, waivers, consents, clearances, extensions and approvals. In addition to and without limiting the agreements of the parties contained above, Seller and Buyer shall (a) comply at the earliest practicable date with any request for additional information or documentary material received by Seller or Buyer from any governmental authority in connection with the HSR Act or any other applicable Law, (b) cooperate with each other in connection with any filing under the HSR Act and in connection with resolving any investigation or other inquiry concerning the transactions contemplated hereby commenced under the HSR Act or by any governmental authority, and (c) use commercially reasonable efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated hereby under any antitrust law. Notwithstanding the foregoing or any other covenant herein contained, nothing in this Agreement shall be deemed to require Buyer or Seller (i) to commence any litigation against any Person in order to facilitate the consummation of any of the transactions contemplated hereby, (ii) to take or agree to take any other action or agree to any limitation that could reasonably be expected to have an adverse effect on the business, assets, condition (financial or otherwise), results of operations or prospects of Buyer on the one hand, or Seller, on the other hand, (iii) to defend against any litigation brought by any governmental authority seeking to prevent the consummation of, or impose limitations on, any of the transactions contemplated hereby, or (iv) to divest or hold separate or in trust (or the imposition of any other adverse condition or restriction with respect to) any assets or operations of Buyer or Seller and their respective affiliates or the Assets.

6.7 Bankruptcy Matters.

(a) Within two (2) business days of the execution of this Agreement, Seller will file and serve the proposed Stalking Horse Notice (as defined in the Sale Procedures Order) in accordance with the Sale Procedures Order with the Bankruptcy Court requesting the entry of an order substantially in the form annexed hereto as Exhibit H (the "Stalking Horse Order") approving the bidding procedures in substantially in the form annexed hereto as Exhibit E (the "Bidding Procedures"). Subject to such approval by the Bankruptcy Court of the Stalking Horse Order, if Seller receives from a third party a higher and better offer to purchase all or any portion of the Assets (or a credit bid by General Electric Capital Corporation for a portion of the Assets)

at the Auction (as defined in the Bidding Procedures), and such third party offer or credit bid is subsequently approved by the Bankruptcy Court and closes as provided by the terms of such offer or credit bid and Buyer is not then in material breach under this Agreement after giving effect to any applicable cure period, then Seller will pay Buyer (A) compensation in the fixed amount of Four Million Three Hundred Twelve Thousand Five Hundred Dollars (\$4,312,500),, for the time and expense associated with initial due diligence and negotiation of this Agreement and the value of serving as the “stalking horse” for Seller’s marketing of the Assets (the “Break-Up Fee”) and (B) reimbursement of all reasonable, documented, out of pocket costs and expenses, including attorneys fees and fees of investment bankers or other financial advisors, incurred by Buyer in connection with this Agreement up to a maximum of \$750,000 (the “Reimbursement Amount”), which payment shall be made to Buyer by wire transfer of immediately available funds to an account designated by Buyer concurrently with the consummation of such sale of all or any portion of the Assets to a third party.

(b) Filing of Sale Motion. Promptly after entry of an order approving the Stalking Horse Order, Seller shall file a motion with the Bankruptcy Court (the “Sale Motion”) requesting entry of an order substantially in the form annexed hereto as Exhibit F (the “Sale Order”) that (i) approves the sale of the Assets to Buyer on the terms and conditions set forth in this Agreement and authorizes Seller to proceed with the Closing, (ii) includes a specific finding and conclusion of law that Buyer is a good faith purchaser of the Assets within the meaning of Section 363(m) of the Bankruptcy Code, (iii) states that the sale of the Assets shall be free and clear of all Encumbrances whatsoever, and (iv) such other provisions as reasonably requested or required by Buyer.

(c) Service of Sale Motion. Seller will serve a copy of the Sale Motion and the accompanying attachments on the Persons identified in Paragraph D of the Sale Order and such other Persons as the Buyer reasonably requests. Prior to service of such documents, Seller will provide Buyer a list of such Persons identified in Paragraph D of the Sale Order.

(d) Copies of Pleadings. Seller shall, to the extent reasonably practicable, provide Buyer with drafts of all documents, motions, orders, filings or pleadings that it proposes to file with the Bankruptcy Court that relate to the approval of this Agreement and the consummation of the transactions contemplated hereby, and will provide Buyer with reasonable opportunity to review and approve such filings. Seller shall also promptly (within one (1) business day) provide Buyer with copies of all pleadings received by or served by or upon Seller in connection with the Bankruptcy Case that relate to or may reasonably be expected to affect the transactions provided for in this Agreement and which have not otherwise been served on Buyer.

(e) Rejection of Leases in Connection with Third Party Transactions. To the extent required, if the parties enter into the Third Party Transactions, then Seller or its affiliates, as applicable, will prior to Closing obtain an order from the Bankruptcy Court rejecting all leases covering the Assets set forth on Exhibit B.

#### 6.8 Taxes; Preparation and Filing.

(a) Buyer shall bear and be responsible for paying any and all sales, use, transfer, filing, recordation, registration, documentary, stamp, gains and similar taxes and fees,

including related penalties, additions to tax, and interest imposed by any governmental authority with respect to the transfer of the Assets (collectively, "Transfer Taxes"), regardless of whether the tax authority seeks to collect such taxes from Seller or Buyer. The parties will cooperate in the preparation, execution and filing of all tax returns and other documentation with respect to all such Transfer Taxes. The parties will take all reasonable steps to minimize any Transfer Taxes.

(b) Seller shall be responsible for the payment of, and will indemnify the Buyer against, all taxes (other than Transfer Taxes, but including without limitation, any interest, penalty or addition thereto) due or assessed that relate to the holding and use of the Exhibit A Assets (including, for the avoidance of doubt any state or local sales and use taxes assessed with respect to the conduct of the Business prior to the Closing Date) for all taxable periods which end on or prior to the Closing Date. Buyer shall be responsible for the payment of, and will indemnify the Seller against, all taxes (including without limitation, any interest, penalty or addition thereto) due or assessed that relate to the holding and use of the Exhibit A Assets for all taxable periods which commence on or after the Closing Date. In the case of any taxable period starting before and ending after the Closing Date (a "Straddle Period"), the amount of taxes allocable to the portion of such Straddle Period ending on the Closing Date shall be deemed to be:

(i) in the case of taxes imposed on a periodic basis (such as real or personal property taxes), the amount of such taxes for the entire period (or, in the case of such taxes payable on an arrears basis, the amount of such taxes for the immediately preceding taxable period) multiplied by a fraction, the numerator of which is the number of calendar days in such taxable period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire relevant taxable period; and

(ii) in the case of taxes not described in (i) above, the amount of any such taxes shall be determined as if such taxable period ended as of the close of business on the Closing Date;

(iii) for purposes of this Section 6.8(b), any Assets that are included in a tax assessment by the relevant tax authority along with assets that are not purchased pursuant to this Agreement shall be deemed to incur a proportionate amount of taxes of all such assets based upon the tax authority assessed tax values of such Assets (any computation of applicable taxes subject to this Section 6.8(b)(iii) shall be included on the Estimated Tax Statement (as defined under Section 6.8(b)(iv)); and

(iv) at least five (5) business days prior to the Closing Date, Seller shall present to Buyer for Buyer's review and consent, such consent not to be unreasonably withheld, a statement reflecting an estimated amount of taxes due by Buyer on the one hand and Seller on the other hand determined under the principles of this Section 6.8(b) (including, for the avoidance of doubt any state or local sales and use taxes assessed with respect to the conduct of the Business prior to the Closing Date); provided that, if the actual amount of such taxes for a Straddle Period is not known for the Straddle Period as of the Closing Date, the amount of such taxes attributable to the portion of the Straddle Period that ends on the Closing Date will be estimated as of the Closing Date based on the amount of tax for the prior taxable period (taking into account any changes in the rate of tax or composition of the assets) (such statement, the

"Estimated Tax Statement," and any amount due thereunder, the "Estimated Tax Adjustment Amount"). When the actual amount of any such taxes calculated on the Estimated Tax Statement becomes known, if the net amount of Seller's share of such taxes is greater than what is shown on the Estimated Tax Statement, then Seller will promptly pay such excess to Buyer and, if Seller's share of the net amount of such taxes is less than what is shown on the Estimated Tax Statement, Buyer will promptly pay such shortfall to Seller.

(c) Any tax refunds (including any interest related thereto) received by Buyer with respect to the Exhibit A Assets for periods prior to and including the time of the Closing Date (or portions thereof) shall be for the account of Seller, and any tax refunds (including any interest related thereto) with respect to the Exhibit A Assets received by Seller relating to periods after the time of the Closing Date (or portions thereof) shall be for the account of Buyer. Buyer shall pay over to Seller, and Seller shall pay over to Buyer, any such refund amount received by the other party (net of any taxes payable by such other party as a result of receiving such tax refunds) within five (5) business days of receipt thereof. Seller shall be entitled to request that Buyer, at Seller's expense, file for and obtain any tax refunds with respect to tax periods or portions thereof ending on or before the Closing Date with respect to the relevant Exhibit A Asset(s), and Buyer shall be entitled to request that Seller, at Buyer's expense, file for and obtain any tax refunds with respect to periods after the time of the Closing Date (or portions thereof) with respect to the relevant Exhibit A Assets. Neither Buyer's nor Seller's consent to such request from the other party shall be unreasonably withheld.

(d) Buyer and Seller will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any tax matters relating to the Assets (including by the provision of reasonably relevant records or information, and cooperation in the filing of any tax returns).

6.9 Confidentiality Agreement; Public Statements. Notwithstanding any provision of this Agreement, the parties acknowledge and agree that the Confidentiality Agreement to which they are parties remains in full force and effect between them. In the event either party desires to issue a press release or make a public statement about the transactions contemplated by this Agreement, such party shall obtain the consent of the other party (such consent not to be unreasonably withheld) to the content of any such press release or other public statement.

6.10 Updating of Representations and Warranties. Each party hereto will give prompt notice to the other party of (a) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of Seller or Buyer, as the case may be, contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date, and (b) any failure of the Seller or Buyer, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any of them under this Agreement; provided that such notice shall not be deemed to modify any representation or warranty previously made in this Agreement, and any failure of the party receiving such notice to take action in response to such notice shall not be deemed a waiver or estoppel with respect to any such matter.

6.11 Non-Solicitation of Third Party Bids. Except as required by Law, from the date hereof until the entry of the Stalking Horse Order by the Bankruptcy Court, Seller covenants and

agrees on behalf of itself and its Representatives, that it will not, directly or indirectly, solicit, induce, recruit, encourage or in any manner attempt to influence any third parties to participate in the Auction; provided, however, that nothing herein shall limit the ability of the Seller to respond to, or provide information in connection with, any unsolicited inquiry relating to any of the Assets or to fulfill any fiduciary duty or other obligations applicable to Seller in connection with the Bankruptcy Case or under the Bankruptcy Code or other applicable Law.

6.12 Covenants Regarding Disassembly and Removal.

(a) Removal Period. Buyer and Seller contemplate that Buyer shall commence the disassembly, packing, crating and removal (including any necessary decontamination or other prep work) of the Assets from the Premises ("Disassembly and Removal") on the Closing Date and shall complete the same expeditiously on or before June 30, 2010 (the "Long Stop Date"). If the Disassembly and Removal cannot be completed by Buyer before the Long Stop Date as a result of any delay caused by Seller or any other Person who purchases assets of Seller that are not included in the Assets, then the Long Stop Date shall be extended for a reasonable period of time, but not more than two (2) months, to allow completion of Disassembly and Removal by Buyer. The period beginning on the Closing Date and ending on the date the Disassembly and Removal is completed is defined as the "Removal Period."

(b) Access, Disassembly and Removal of the Assets. From the Closing Date until the end of the Removal Period, Seller and Buyer agree to use commercially reasonable efforts to take, or cause to be taken, all actions reasonably necessary, proper and advisable to facilitate the Disassembly and Removal in a prompt and efficient manner. Seller shall afford Buyer, Buyer's vendors or contractors and any other third parties retained by Buyer in connection with the Disassembly and Removal and their respective employees (such vendors, contractors and third parties being collectively referred to as the "Buyer Parties"), subject to applicable Law and in accordance with the procedures attached hereto as Exhibit G (the "Tool Removal and Maintenance Procedures"), reasonable access to, use of and the right to enter the Premises to complete the Disassembly and Removal during extended hours (i.e., 7 a.m. to 10 p.m., seven days a week, unless otherwise mutually and reasonably agreed), and subject to applicable Law and the Tool Removal and Maintenance Procedures, to bring on the Premises and operate such equipment, tools, vehicles and other devices as may be reasonably necessary to efficiently engage in and complete the Disassembly and Removal. Buyer shall provide Seller with two (2) business days advance notice of its intent to have individuals employed or retained by Buyer Parties enter the Premises. Seller may refuse to allow specific individuals employed or retained by Buyer Parties enter the Premises based on reasonable security concerns, provided however that Seller promptly informs Buyer of such concerns, and provided further that Seller agrees to work cooperatively with Buyer to address any such security concerns in a timely fashion and with the mutual goal of avoiding delay in the Buyer's removal of the Assets from the Premises. At Buyer's request, Seller shall also provide input to Buyer on individuals or companies, including Seller's former employees and contractors, who may be helpful in connection with the Disassembly and Removal.

(c) Maintenance Costs. The parties agree to allocate the maintenance costs during the Removal Period with respect to the Assets as provided on Exhibit G.

(d) Covenants of Buyer. Buyer hereby covenants and agrees that:

(i) Buyer will promptly after the Closing Date enter into an agreement to effectuate the Disassembly and Removal with removal vendors it will designate (collectively, the "Removal Vendor"), at Buyer's sole discretion.

(ii) Buyer shall effectuate the Disassembly and Removal in compliance with all applicable Laws and shall obtain any permits or consents required in connection with the Disassembly and Removal;

(iii) Buyer shall effectuate the Disassembly and Removal using qualified workers and contractors, and all work performed on or about the Premises in connection with the Disassembly and Removal shall be performed in a workmanlike manner, consistent with good industrial practice;

(iv) Buyer shall be solely responsible for the costs of Disassembly and Removal; and

(v) The insurance policies maintained by Buyer that cover the Assets shall provide that the insurers waive any rights of setoff, counterclaim, deduction or subrogation against Seller.

(e) Covenants of Seller. Seller hereby covenants and agrees that during the Removal Period:

(i) Seller will not sell, assign, transfer, lease, sublease, or otherwise convey any of its rights, claims and interest in, to and under the Premises during the Removal Period unless each new owner, assignee, transferee, lessee, sublessee or successor assumes all obligations of Seller under Exhibit G and under Sections 6.12(e) and 6.12(f).

(ii) Seller shall keep the Premises (including all related facilities infrastructure, systems and utilities), intact and maintain such Premises in good repair and operable condition in the ordinary course of business and consistent with Seller's past practices and the Tool Removal and Maintenance Procedures.

(iii) Seller shall provide and pay for all utilities, maintenance and other services required to secure and maintain the Premises and the Assets in accordance with the Tool Removal and Maintenance Procedures.

(iv) Seller shall keep all material Permits required to own, operate and/or lease the Premises and the Assets in full force and effect and will not take any action which would result in the revocation or modification of any such Permit.

(v) Seller shall (A) maintain security personnel and comply with security procedures at the Premises in the ordinary course of business and consistent with its past practices and the Tool Removal and Maintenance Procedures, and (B) limit access to the Premises and ensure that any third parties who enter the Premises to inspect or remove any asset of Seller that is not included in the Assets do not damage or disturb the Assets.



(vi) Seller will not move, remove, replace or otherwise alter the Assets without first obtaining Buyer's prior written consent.

(f) Insurance.

(i) Seller's Insurance. Seller shall during the Removal Period provide at its own cost and expense (including all premiums, fees, charges and deductibles) and maintain all (A) risk property insurance on a replacement value basis for direct physical loss of or damage to the Premises ("Property Insurance") and (B) comprehensive general liability insurance in an amount not less than \$10 million per occurrence for bodily injury, death and property damage resulting from the use, operation, ownership and possession of the Premises ("Liability Insurance") (and, if requested, Seller will provide Buyer with satisfactory evidence thereof). Such insurance policies shall be consistent with the then-current industry practice, containing such deductibles or other self-insurance retainage amounts consistent therewith and as are reasonably acceptable to Buyer. Such insurance policies shall be maintained with a financially sound and reputable insurer licensed to issue insurance policies in the United States (and which is reasonably acceptable to Buyer) and shall be subject to the following terms and conditions:

(A) The policies shall provide that the insurers waive any rights of setoff, counterclaim, deduction or subrogation against Buyer;

(B) The policies, or certificates thereof, shall provide that thirty (30) days prior to any cancellation, expiration, lapse of coverage, reduction of coverage or other material change in the policy, notices of same shall be given to Buyer in accordance with Section 10.7; and

(C) The policies shall provide that Seller shall prepay the premiums required by such policies through the expiration of the Removal Period.

(D) Seller agrees to maintain the insurance listed on Schedule 4.9 or replacement insurance that at a minimum has the characteristics described in Section 7.2(e). In the event that Seller procures such replacement insurance, Seller agrees to notify Buyer in writing of that fact. Buyer may deliver written notice to Seller requesting it to increase the minimum policy loss limit for such replacement insurance from \$250 million to \$500 million for a term specified by Buyer. Upon receipt of such written notice from Buyer, Seller shall promptly take all such actions necessary to effect such increase, and Buyer shall promptly reimburse Seller for the incremental premium cost increase resulting from such increase. Additionally, Seller agrees to work with Buyer in good faith to ensure that Buyer will effectively be able to realize the benefits of such insurance increase.

(ii) Workers' Compensation. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the Commonwealth of Virginia. In addition, Seller shall require each contractor or other third party service provider it engages to similarly maintain Workers' Compensation Insurance and Employees Liability Insurance in accordance with the laws of the Commonwealth of Virginia for all of the employees of such contractor or other third party service provider.

(iii) Insurance Maintained by Buyer Parties. Buyer shall maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with applicable Law for its employees who are on the Premises. Buyer agrees that it shall require each contractor or other third party service provider it engages to remove the Assets maintain with financially sound and reputable insurers licensed to issue insurance policies in the United States the following insurance policies and coverage (and, if requested, will provide Seller with satisfactory evidence thereof): (A) general liability insurance with coverage of not less than \$10 million per occurrence on account of injury or damage to persons or property caused by any of the Buyer Parties; and (B) workers compensation insurance meeting all requirements of applicable Law for employees of the Buyer Parties.

(iv) Third Party Insurance. Seller shall require that any other Person entering the Premises to remove tools or other assets of Seller that are not included in the Assets shall maintain insurance policies in such amounts and on such terms and conditions not less favorable to Seller and the Premises as is specified herein and consistent with then-current industry standards.

(v) Risk of Loss. For insurance purposes, the risk of loss with respect to an Asset passes to Buyer at Closing.

(vi) Abandonment. Notwithstanding anything contained herein to the contrary, Buyer, in its sole discretion, shall have the right to abandon any Assets identified herein, other than those Assets listed on (i) Exhibit A-1 and (ii) Sections 2.1(a) and (b) of Exhibit A, without any obligation to remove or dispose of such Assets.

6.13 Use of Software. To the extent Seller has a legal right to do so without incurring cost or liability, at the Closing Seller will transfer to Buyer any and all rights Seller may have to software owned by Seller or licensed to Seller by any other Person under a fully paid-up license that is embedded in the Assets and that is necessary for the basic operation of the Assets. The parties understand and agree that Seller has no obligation to obtain any license, right, title or interest to such software for the benefit of Buyer.

## **ARTICLE VII CONDITIONS TO CLOSING**

7.1 Conditions to Each Party's Obligation to Effect the Closing. The respective obligations of each party to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following conditions:

(a) there shall not be in effect any preliminary or permanent injunction or other order or decree by any federal or state court or administrative agency having competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated in this Agreement;

(b) the Bankruptcy Court shall have entered (i) the Stalking Horse Order, substantially in the form attached to this Agreement and (ii) the Sale Order approving this Agreement, substantially in the form attached to this Agreement, and such Sale Order, among other things: (A) shall include a determination that Buyer is a purchaser in good faith within the

meaning of section 363(m) of the Bankruptcy Code and, therefore, entitled to the protections of such section, (B) shall include a waiver of the ten (10) day stay set forth in Federal Rule of Bankruptcy Procedure 6004(h), and (C) shall not have been stayed or otherwise limited as to its terms or effectiveness; and the Sale Order (i) shall not have been reversed or stayed at the time of Closing, and (ii) shall not be the subject of an appeal or motion for rehearing or new trial, provided however, that Buyer, in its sole and absolute discretion, may elect to proceed with the Closing even if an appeal from or a motion for rehearing or new trial on the Sale Order is pending.

(c) all filings, consents and approvals necessary to permit the parties hereto to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect; and

(d) any waiting period (including any extension thereof) applicable to the transactions contemplated in this Agreement under the HSR Act and the regulations of any applicable governmental antitrust or competition authority shall have terminated or expired.

7.2 Conditions to Obligations of the Buyer. The obligation of the Buyer to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) the representations and warranties of Seller set forth in this Agreement shall have been true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the date of this Agreement and shall be true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the Closing Date as though made at and as of the Closing (except to the extent that such representations and warranties are stated to be made as of a date other than the date they were made, in which case they shall have been true and correct in all material respects, and those representations and warranties that are qualified as to materiality shall be true and correct in all respects as of such other date);

(b) Seller shall have performed and complied in all material respects with all obligations and covenants contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing;

(c) all Encumbrances on the Assets shall have been released or fully discharged pursuant to the Sale Order;

(d) the Assets, taken as a whole, shall not have been materially and adversely affected by any act of God or public enemy, casualty, theft, fire, flood, explosion, hurricane, tornado, earthquake, hail, storm, drought, accident, vandalism, war, or other event or occurrence, whether or not covered by insurance; and

(e) Seller shall have provided Buyer with an endorsement or other document naming Buyer as loss payee as its interest may appear under the insurance policies listed on Schedule 4.9 (or such replacement insurance policies having the following characteristics:

minimum policy loss limit - \$250 million; maximum deductible: \$10 million per occurrence) for the period beginning upon the execution of this Agreement and continuing until the Closing Date; and

(f) Buyer shall have received the other items to be delivered to it pursuant to Section 3.2.

Any condition specified in this Section 7.2 may be waived, in whole or in part, by Buyer, provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

7.3 Conditions to Obligations of Seller. The obligation of Seller to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) The representations and warranties of Buyer set forth in this Agreement shall have been true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the date of this Agreement and shall be true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the Closing Date as though made at and as of the Closing (except to the extent that such representations and warranties are stated to be made as of a date other than the date they were made, in which case they shall have been true and correct in all material respects as of such other date);

(b) Buyer shall have performed and complied in all material respects with all obligations and covenants contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing; and

(c) Seller shall have received the other items to be delivered to it pursuant to Section 3.3.

Any condition specified in this Section 7.3 may be waived, in whole or in part, by Seller, provided that no such waiver shall be effective against Seller unless it is set forth in a writing executed by Seller.

## ARTICLE VIII TERMINATION

8.1 Termination. This Agreement may be terminated prior to the Closing Date as follows:

(a) by mutual written consent of Seller and Buyer;

(b) by either party upon written notice to the other party, if the Closing has not occurred on or before October 31, 2009 (as may be extended by written agreement of the parties) (the "Termination Date"); provided that the Termination Date will be automatically extended to November 30, 2009 if Buyer is the "Successful Bidder" after the conclusion of the

“Auction”, as such terms are defined in the Bidding Procedures; and provided further that the party seeking to terminate this Agreement may not effect such termination if it is then in breach of its obligations hereunder in any material respect after giving effect to any applicable cure period;

(c) by either party, upon written notice to the other party, if (i) there shall be any Law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (ii) consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of (A) the Bankruptcy Court or (B) any other court or governmental authority having competent jurisdiction;

(d) by Buyer, upon written notice to Seller, if Seller shall consummate a sale of all or any portion of the Assets pursuant to a competing bid;

(e) by Buyer, upon written notice to Seller, if the Bankruptcy Court does not enter (i) the Stalking Horse Order on or before September 9, 2009, or (ii) the Sale Order on or before September 30, 2009, unless extended to a later date by mutual consent of Seller and Buyer;

(f) by Buyer, upon written notice to Seller, if, on or prior to the Closing Date, Seller is in material breach of any representation, warranty, covenant or agreement herein contained (ignoring any materiality qualifier contained therein) and such breach shall not be cured within ten (10) days of the date of notice of breach served by Buyer claiming such material breach; provided, that the right to terminate this Agreement pursuant to this Section 8.1(f) shall not be available to Buyer if it is in material breach of this Agreement at the time notice of termination is delivered;

(g) by Buyer, upon written notice to Seller, if any of the conditions to Buyer’s obligations to consummate the transactions contemplated by this Agreement provided in Sections 7.1 or 7.2, as applicable, hereof shall not have been satisfied, complied with or performed in any material respect (ignoring any materiality qualifier contained therein) as of the Termination Date and Buyer shall not have waived in writing such failure of satisfaction, non-compliance or non-performance;

(h) by Seller, upon written notice to Buyer, if, on or prior to the Closing Date, Buyer is in material breach of any representation, warranty, covenant or agreement herein contained (ignoring any materiality qualifier contained therein) and such breach shall not be cured within ten (10) days of the date of notice of breach served by Seller claiming such material breach; provided, that the right to terminate this Agreement pursuant to this Section 8.1(h) shall not be available to Seller if it is in material breach of this Agreement at the time notice of termination is delivered; and

(i) by Seller, upon written notice to Buyer, if any of the conditions to Seller’s obligations to consummate the transactions contemplated by this Agreement provided in Sections 7.1 or 7.3, as applicable, hereof shall not have been satisfied, complied with or performed in any material respect (ignoring any materiality qualifier contained therein) as of the

Termination Date and Seller shall not have waived in writing such failure of satisfaction, non-compliance or non-performance.

8.2 Effect of Termination. No termination of this Agreement pursuant to Section 8.1 shall be effective until written notice thereof is given to the non-terminating party specifying the provision hereof pursuant to which such termination is made. If validly terminated pursuant to Section 8.1, this Agreement shall be void and of no effect, and all further obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other; provided that the provisions of the Stalking Horse Order and Confidentiality Agreement, Section 2.1(b) (Deposit Amount), Section 6.7(a) (as it relates to the Break-Up Fee and Reimbursement Amount), Section 6.9 (Confidentiality Agreement; Public Statements) this Section 8.2 (Effect of Termination), Article IX (Survival) and Article X (Miscellaneous) of this Agreement shall survive the termination of this Agreement; provided, further, that nothing contained in this Section 8.2 shall relieve any party from liability for any breach of this Agreement.

## **ARTICLE IX SURVIVAL**

### 9.1 Survival of Representations and Warranties.

(a) The representations and warranties of Seller in this Agreement and the Seller Ancillary Documents other than Sections 4.2, 4.3, 4.4, 4.10 and 4.13 of this Agreement shall not survive the Closing. The representations and warranties of Seller in Sections 4.4 and 4.10 of this Agreement shall survive Closing until December 31, 2009. The representations and warranties of Seller in Sections 4.2, 4.3 and 4.13 of this Agreement shall survive Closing until the end of the Removal Period.

(b) The representations and warranties of Buyer in this Agreement and the Buyer Ancillary Documents shall not survive the Closing, except for the representations and warranties of Buyer in Sections 5.2, 5.3 and 5.5 of this Agreement, which shall survive Closing until the end of the Removal Period.

(c) The parties hereby agree that the limitations set forth above in this Section 9.1 on the survival of the representations and warranties of the parties shall not apply to a representation or warranty in the event that a party has committed fraud or made an intentional misrepresentation with respect to such representation or warranty.

9.2 Survival of Covenants. The covenants and agreements of Seller and Buyer in this Agreement, the Seller Ancillary Documents and the Buyer Ancillary Documents shall survive the Closing in accordance with the terms of such covenants and agreements.

9.3 Exclusive Remedy. The parties have voluntarily agreed to define their rights, liabilities and obligations respecting the subject matter of this Agreement exclusively in contract pursuant to the express terms and provisions of this Agreement. Accordingly, except with respect to claims based on fraud or intentional misrepresentation, the sole and exclusive remedies for any breach of the terms and provisions of this Agreement and any certificates, documents or other agreements executed in connection with this Agreement (including any representations and

warranties set forth herein and therein) or any tort claims or causes of action that may be based upon, arise out of or relate to this Agreement and any certificates, documents or other agreements executed in connection with this Agreement, or the negotiation, execution or performance of this Agreement and any certificates, documents or other agreements executed in connection with this Agreement, shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies may be further limited or excluded pursuant to the express terms of this Agreement or any certificates, documents or other agreements executed in connection with this Agreement).

**ARTICLE X  
MISCELLANEOUS**

10.1 “AS IS” TRANSACTION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO SELLER’S BUSINESS OR TO THE ASSETS. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIM ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. IF THE CLOSING OCCURS, BUYER WILL ACCEPT THE ASSETS, AT THE CLOSING DATE “AS IS,” “WHERE IS,” SUBJECT TO THE PROVISIONS OF THIS AGREEMENT AND THE SALE ORDER PROVIDING, AMONG OTHER THINGS, THAT THE SALE OF THE ASSETS IS FREE AND CLEAR OF ALL ENCUMBRANCES.

10.2 NO CONSEQUENTIAL OR PUNITIVE DAMAGES; LIMITATION OF LIABILITY. NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO ANY OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES CLAIMS BY SUCH PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, OR IN ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT DELIVERED IN CONNECTION WITH THIS AGREEMENT, TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF BUYER AND ITS REPRESENTATIVES TO SELLER AND ITS REPRESENTATIVES ARISING OUT OF ANY AND ALL BREACHES OR VIOLATIONS BY BUYER THAT OCCUR AT OR BEFORE THE CLOSING, INCLUDING WITHOUT LIMITATION ANY BREACH BY THE BUYER OF ITS OBLIGATION TO EFFECT THE CLOSING HEREUNDER, OR FAILURES AT OR BEFORE THE CLOSING OF BUYER TO COMPLY WITH, THIS AGREEMENT OR SUCH OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, SHALL NOT EXCEED THE AMOUNT OF THE DEPOSIT, AND THE SOLE AND EXCLUSIVE RECOURSE AND REMEDY OF SELLER AND ITS REPRESENTATIVES IN CONNECTION WITH ANY SUCH BREACH, VIOLATION OR FAILURE SHALL BE TO MAKE A CLAIM AGAINST

THE DEPOSIT IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE DEPOSIT ESCROW AGREEMENT.

10.3 Certain Definitions.

(a) “Adjustment Mechanism” means that if one or more of the Third Party Transactions are not consummated on or before the Closing Date or are not approved by the Bankruptcy Court in the Sale Order, (i) the Purchase Price shall be reduced as set forth on Schedule 10.3, (ii) the term “Assets” shall exclude the assets related to the relevant Third Party Owner listed on Exhibit B as provided therein, and (iii) the Deposit shall be reduced as set forth on Schedule 10.3.

(b) “affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

(c) “Assets” means, subject to the Adjustment Mechanism, the assets set forth on Exhibits A and B, including the rights to use the software and other intellectual property embedded in such Assets.

(d) “Business” means the Assets and the business operated by Seller prior to the Petition Date.

(e) “Exhibit A Assets” shall refer to the Assets set forth on Exhibit A.

(f) “Seller’s Knowledge” shall refer to the actual knowledge, after due inquiry, of any, some or all of the members of Seller’s management.

(g) For any party hereto, a document is “substantially in the form” of a document referred to in this Agreement when it is identical to the document referred to except for revisions necessary to correct typographical and clerical errors, changes to the date of such document and other modifications made with the consent of such party, such consent to not be unreasonably withheld. For the sake of clarity, a party shall not be deemed to have unreasonably withheld its consent if such revisions, changes or modifications would materially adversely affect its interest.

(h) “Third Party Owners” means Overland Capital Group, Inc. and the Royal Bank of Scotland.

(i) “Third Party Transactions” means the transaction or transactions that may be entered into among Seller, Buyer and either or both of the Third Party Owners to acquire the Assets set forth on Exhibit B.

10.4 Expenses. Except (a) for the provisions of Section 6.5, (b) with regard to the Break-Up Fee and Reimbursement Amount as set forth in Section 6.7(a), and (c) as otherwise expressly set forth in the Stalking Horse Order, each party will bear its respective costs and expenses, including attorneys fees and fees of investment bankers or other financial advisors,



incurred in connection with this Agreement, the Seller Ancillary Document, the Buyer Ancillary Documents and the transactions contemplated hereby and thereby.

10.5 Further Assurances. On and after the Closing, each party will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof, including, without limitation and, subject to Seller's obligations under Section 6.12, putting Buyer in possession and operating control of the Assets.

10.6 Amendment, Modification, Extension and Waiver. This Agreement may be amended, modified or supplemented only by written agreement of Seller and Buyer. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived in writing by the party or parties granting such waiver, but such waiver shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure to comply with any obligation, covenant or condition.

10.7 Notices. All notices, request, demand and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) if delivered by hand, upon delivery; (b) if delivered by mail certified or registered mail with postage prepaid, within three (3) business days after dispatch or (c) if delivered by facsimile transmission, on the next business day after dispatch, provided that the sender receives confirmation of receipt, in each case addressed as follows:

(a) If to Seller, to:

Qimonda Richmond, LLC  
6000 Technology Boulevard  
Sandston, VA 23150  
Facsimile: (919) 474-6888  
Attention: Legal Department

With copies to (for information purposes only):

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017-3954  
Facsimile: (212) 455-2502  
Attention: D. Rhett Brandon and Morris J. Massel

The Official Committee of Unsecured Creditors of Qimonda North  
America and Qimonda Richmond, LLC  
c/o Jones Day  
2727 North Harwood  
Dallas, Texas 75201  
Facsimile: (214) 969-5100  
Attention: Troy B. Lewis and Daniel P. Winikka

(b) If to Buyer, to:

Texas Instruments Incorporated  
12500 TI Boulevard, M/S 8658  
Dallas, Texas 75243  
Facsimile No.: (214) 480-5061

With a copy to (for information purposes only):

Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, TX 75201-6659  
Facsimile: (214) 978-4306  
Attention: Joseph J. Wielebinski and Robert R. Kibby

10.8 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party without the prior written consent of the other parties hereto, which shall not be unreasonably withheld, and any such purported assignment in violation hereof shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, heirs, and legal representatives and no other person or entity shall have any right, benefit or obligation hereunder.

10.9 Third Party Beneficiaries. Buyer and Seller intend that this Agreement and those transactional documents contemplated by this Agreement shall not benefit or create any right or cause of action in any Person other than the parties hereto.

10.10 Severability; Time of Essence. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. Time is of the essence with regard to this Agreement and the transactions contemplated hereby.

10.11 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE UNITED STATES BANKRUPTCY CODE AND THE LAWS OF THE STATE OF DELAWARE.

10.12 Submission to Jurisdiction. The parties hereto agree that all litigation concerning any dispute between Seller and Buyer arising from or related in any way to this Agreement and the transactions contemplated hereby, those arising out of the sale of the Assets, or any conduct or facts related thereto, shall be heard by the Bankruptcy Court, and if the Bankruptcy Case has been closed, such litigation shall be heard by the United States District Court or the courts of the State of Delaware having subject matter jurisdiction thereof and sitting in New Castle County,

Delaware, and the parties hereby consent to the jurisdiction of such courts for such purposes, and waive any objection they may have thereto based on venue, *forum non conveniens* or other similar doctrines.

10.13 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or other electronic copy, and a facsimile or electronic copy of this Agreement or of a signature of a party will be effective as an original.

10.14 Incorporation of Exhibits. All Schedules and Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

10.15 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, and the Seller Ancillary Documents and Buyer Ancillary Documents and the other documents delivered pursuant hereto contain the entire understanding of the parties hereto with respect to the subject matter hereof and thereof, and supersede all prior agreements and understandings, inducements or conditions, express or implied, oral or written, between the parties with respect to the subject matter hereof and thereof.

10.16 No Successor Liability. The parties intend that, except where expressly prohibited under applicable Law, upon the Closing, Buyer shall not be deemed to: (i) be the successor of Seller, (ii) have, de facto, or otherwise, merged with or into Seller, (iii) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (iv) be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the parties intend that Buyer shall not be liable for any bankruptcy claims, other claims, written notices, causes of action, proceedings, complaints, investigations or other proceedings against Seller or any of its predecessors or affiliates, and Buyer shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Assets or any obligations of Seller arising prior to the Closing Date, including, without limitation, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Business or the Assets, as the case may be, prior to the Closing, except as expressly provided in this Agreement. The parties agree that the provisions substantially in the form of this Section 10.16 shall be reflected in the Sale Order.

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IN WITNESS WHEREOF, the undersigned have executed this Asset Purchase Agreement to be effective as of the date first above written.

**SELLER:**

**QIMONDA RICHMOND, LLC**

By: Miriam Martinez  
Name: MIRIAM MARTINEZ  
Title: PRESIDENT & CFO

**BUYER:**

**TEXAS INSTRUMENTS INCORPORATED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Asset Purchase Agreement to be effective as of the date first above written.


**SELLER:**

**QIMONDA RICHMOND, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**TEXAS INSTRUMENTS INCORPORATED**

By:  \_\_\_\_\_  
Name: Kevin Ritchie  
Title: Sr VP TMG

**EXHIBIT A**

**QIMONDA ASSETS**

[See Attached]

## EXHIBIT A

### QIMONDA ASSETS

#### **I. 300MM EQUIPMENT:**

SEE attached Exhibit A-1

The 300mm equipment identified on Exhibit A-1 is collectively referred to herein as the "Equipment".

#### **II. INFRASTRUCTURE AND TOOLING:**

##### 2.1 Process Tools:

- (a) All upgrades, chambers and tooling related to the Equipment;
- (b) All pumps, chillers, abatement and other direct support infrastructure related to the Equipment;
- (c) All equipment or other items that are attached to or associated with the Equipment, including, without limitation, process kits, gas sticks, flow meters, valves, regulators, filters, utility racks, computers, carts, control systems, above wafer utilities, gas and chemical valve manifold boxes (VMBS) that are related to the Equipment, electrical transformers and panels that are dedicated to the Equipment, coated exhaust ducts, process cooling water (PWC) components, and tool base plates;
- (d) All parts clean equipment owned by Seller, including, without limitation, implant source clean and bake, tube clean equipment, and parts clean equipment;
- (e) All reticle equipment owned by Seller, test reticles, probe card equipment (not to be interpreted as probe cards), and test equipment (not to be interpreted as semiconductor testers);
- (f) All test equipment (not to be interpreted as semiconductor testers) and other fixtures related to the Equipment; and
- (g) A pro-rated amount of spare parts and other consumable items related to the Equipment and Infrastructure and Tooling (as defined below) (prorated based upon the percentage of a particular tool type or category being purchased by Buyer (as an example, if Buyer is purchasing 8 of the 10 scanners Seller owns which relate to the Equipment and/or Infrastructure and Tooling, then Buyer shall get 80% of the spare parts and other consumable items associated with such scanners);

## 2.2 Automated Material Handling System (AMHS):

(a) All equipment and other structural support items related to the Automated Material Handling System, including, without limitation, the stockers, cars, rails, tracks, front opening unified pods (FOUPs), front opening shipping boxes (FOSB), clamshells, computers, fire doors, power supplies, emergency off stands and other structural support items;

(b) All operating and control system hardware related to the Automated Material Handling System and/or material control system hardware (MCS); and

(c) All test equipment, spare parts, maintenance equipment and other fixtures related to the Automated Material Handling System.

## 2.3 Other Support Equipment:

(a) All ancillary equipment and other contents located in the Failure Analysis (FA) Labs related to the Equipment, including, without limitation, wip racks, shelving, tables, chairs, test fixtures and custom storage in the FA Labs;

(b) All ancillary equipment and other contents located in the Quality Assurance (QA) Labs – Wafer Level Reliability (WLR) related to the Equipment, including, without limitation, wip racks, shelving, tables, chairs, test fixtures and custom storage in the QA Labs;

(c) All 300mm fab engineering support equipment, including, without limitation, meters, hand tools, tool boxes, test equipment, including leak detectors, oscilloscopes, radio frequency (RF) measurement, wave generators, and calibration equipment; and

(d) All manufacturing support equipment, including, without limitation, smock racks, clean room garments and consumables, with the exception of those items identified on Exhibit A-2.

## 2.4 Information Technology Support:

(a) All personal computers, minicomputers, computer servers and other information technology or network equipment and the Automated Material Handling System, including, without limitation, Automation servers, UNIX servers, Blade servers and Windows servers, with the exception of those items identified on Exhibit A-2;

(b) All data storage devices, including, without limitation, Net Applications and Sun Storage, with the exception of those items identified on Exhibit A-2; and

(c) All server racks and spare parts, including, without limitation, computer hard drives, computer memory and central processing units, with the exception of those items identified on Exhibit A-2.



2.5 Facilities:

(a) All chemical dispense units (CDUs) and tanks, gas cabinets and panels related to the Equipment; and

(b) All 300mm factory facilities tools, testing and monitoring equipment, including, without limitation, power monitors, borescopes, velometers, particle counters, total organic compound (TOC) meters, leak checkers, material movement tooling and equipment, rigging equipment and manlifts, fork lifts, carts, pallet jacks, ladders, lifts and casters.

The assets listed above are collectively referred to herein as the “Infrastructure and Tooling”.

**III. OTHER ASSETS:**

3.1 All appliances, furniture, fixtures, small wares, utensils, cafeteria equipment, computer hardware (desktops, laptops, monitors, printers, displays for operator terminals and connected cables and wiring), office equipment (including conference equipment), office supplies, IP phones, stockroom supplies, parts storage, cleaning supplies, safety and hazmat equipment, uninterruptible power supply (UPS), but excluding (i) environmental waste, (ii) select equipment that is necessary for Seller to continue its liquidation process, and (iii) such other assets as are identified on Exhibit A-2;

3.2 All software source code, design environments, user interfaces, technology, and information, to the extent such items exist, and firmware, test benches, blueprints, specifications, and technical drawings (or similar information in electronic format), used by Seller in connection with the design, development, testing of, or incorporated into, the Assets);

3.3 All technical documentation, including all rights and interest in and to, lab journals, notebooks and programmer’s notes, data, source code, object code, development files, manufacturing, engineering and other drawings and manuals, blue prints, designs, plans, schematics, user’s guides and instructions, parts lists, technical information, design and engineering specifications and similar materials recording or evidencing information related to the Assets (collectively, the “Technical Documentation”);

3.4 To the extent it has a legal right to do so without incurring any cost of liability:

(a) All rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by manufacturers, suppliers or others to or for the benefit of Seller or the Third Party Owners in connection with the Assets (collectively, the “Warranty Rights”);

(b) All municipal, state, local, federal and other governmental franchises, permits, licenses, agreements, waivers and authorizations from, issued or granted by, any jurisdiction, or the portion thereof, held or used by Seller in connection with, or necessary for the use or operation of, any of the Assets, to the extent legally transferable (assuming any necessary Bankruptcy Court approval) by Seller (collectively, the “Permits”);

3.5 All causes of action, rights of action (except to the extent that such causes of action or rights of action relate to Excluded Liabilities) and product liability claims against other Persons that relate to the Assets, whether arising now or at any time in the future, to the extent that all or any of the foregoing are transferable, including, without limitation, transfers that require third party approval (as used herein, "Person" shall mean a corporation, limited partnership, partnership, association, trust, limited liability company, joint venture, governmental authority or natural person);

3.6 All insurance proceeds and rights to insurance proceeds that relate to the Assets;

3.7 Copies of all files, books, records, and other information and data in Seller's possession and control, in whatever form recorded, that directly pertain to the Assets, including, without limitation, production reports and records, service and warranty records, equipment logs, and operating guides and manuals.

**EXHIBIT A-1**  
**Clionda Owned 300mm Equipment**

Current Asset Number	Area	Serial #	Tool ID	Supplier	Model	Asset Description
10393	300mmFAB	F54492	ETCLAMZ09	LAM	Verisy M	LAM Verisy M Metal Etch
12039	300mmFAB	D9055A	FLMHDPZ12	Novellus	NVL5 Speed	Plasma HDP AA 1 MF 2 Chmb (FLMHDPZ12)
11341	300mmFAB	408316	FLMPECZ23	AMAT	Producer PE	Producer PE PE Silane (BSG/ARC/Silane)-FLMPECZ23
11324	300mmFAB	408325	FLMPVDZ13	AMAT	ENDURA II	AMAT-M1 / M2 / CS / C1 #04
11344	300mmFAB	408313	FLMPVDZ14	AMAT	ENDURA II	Producer PE PE Silane (BSG/ARC/Silane) - FLMPVDZ14
10554	300mmFAB	138171	IMPVMCZ06	Varian	VN1Sta 810XE	VN1Sta 810EHP Medium Current
10847	300mmFAB	2218098	LITLNS05	Nikon	SF130	SF130 I Line
10648	300mmFAB	MD-G250350	LITLNS05	TEL	LITHIUS	LITHIUS I-Line Track
10289	300mmFAB	2218065	LITPIQS01	Nikon	SF130	Nikon SF130 TV Stepper
10400	300mmFAB	MD-E240926	LITPIQT01	TEL	ACT 12	TEL ACT12 TV-Track
10348	300mmFAB	850	WETSEZZ31	SEZ	DaVinci DV-34BF	SEZ DaVinci DV-34BF DSP frontside clean
13143	300mmFAB	T239198	WETSTIZ31	Semitoool	Raider sp312	WET-Semitoool-Raider 312-WETSTIZ31
10392	300mmFAB	407752	CMPAMTZ01	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Wet
10391	300mmFAB	407719	CMPAMTZ11	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Wet
11364	300mmFAB	L000005Y6405	DIFTELZ10	TEL	303i	303i: OXIDATION UNDOPED (OXIUD)
10414	300mmFAB	406892	ETCAMTZ01	AMAT	DPS2	AMAT Z01X-DPS2 AMAT Poly Etch
10642	300mmFAB	H00704	ETCTELZ06	TEL	SCCM	SCCM Tel Oxide Etch
10410	300mmFAB	407254	FLMSACZ10	AMAT	Producer SA	AMAT Producer SA OZONE TEOS Uodoped (3 Twins)
10407	300mmFAB	D8868A	FLMTUGZ10	Novellus	DUAL ALTUS	Novellus DUAL ALTUS MCVYD TUNGSTEN 4 Chmb
10556	300mmFAB	G440159	LITARFT02	TEL	LITHIUS	LITHIUS 193 ARF Track
10565	300mmFAB	200504080563	MDKFTKD02	KLA	FX100 W/ ACCUFILM	FX100 W/ ACCUFILM FILM THICKNESS
12875	300mmFAB	09-2907-001183	MDYSRTX02	ASYST	WAFERSORTER 4	WAFERSORTER 4 POF AUT-Asyst-Wafersorter 4PRT-DIF-MDYSTRX02
12874	300mmFAB	09-3307-001207	MEYSRTI02	ASYST	WAFERSORTER 2	WAFERSORTER 2 POF AUT-Asyst-Wafersorter 2PRT-SIS-MEYSRTI02
11349	300mmFAB	U779	MLACDLX05	AMAT	VERITY SEM	VERITY SEM CD SEM TOOL
11392	300mmFAB	U769	MLACDLX06	AMAT	VERITY SEM	VERITY SEM CD SEM TOOL
10651	300mmFAB	206	MLLMAIX02	Leica	LDS3300 (MACRO)	LDS3300 (Macro) MACRO INSPECTION TOOL
10570	300mmFAB	0101	MLLMAIX01	Leica	LDS3300 (Combi)	LDS3300 (Combi) Macro/Micro INSPECTION TOOL
10571	300mmFAB	34015	MLNOVRX02	Nikon	NRM3300	NRM3300 OVERYLAY TOOL
10331	300mmFAB	W517	MPADRSF01	AMAT	SEMVISION G2	SEMVISION G2 with FIBAMAT SEMVISION G2 with FIB Defect Review Tool
11579	300mmFAB	W23673340	MPKBFIX03	KLA	2387 Brightfield Tool	PLY-KLA-Brightfield Inspection Tool-MPKBFIX03
12074	300mmFAB	1106	MPKDFIX06	KLA	PUMA-9130	PLY-Puma 9130(upgrdble to 9150)MPKDFIX06
10335	300mmFAB	UV1117	MPKDFIX08	KLA	AIT FUSIONXUV	KLA AIT FUSIONXUV Darkfield Inspection Tool
12958	300mmFAB	1141149	MPKDFIX11	KLA	PUMA-9130	PLY-KLA-PUMA 9130-MPKDFIX11
12876	300mmFAB	09-2907-001181	MMYSRTX18	ASYST	WAFERSORTER 4	WAFERSORTER 4 POF AUT-Asyst-Wafersorter 4PRT-WET-MWYSRTX18
12897	300mmProbe	JP10100439	PRBMT002	Agilent	4072B	Param-Agilent-Tester-PRBMT002
13036	300mmFAB	MT3802R	WETMTNZ33	Mattson	Aspen III Strip	ASH-Mattson-Asher-WETMTNZ33
12043	300mmFAB	3068	WETMTNZ34	Mattson	Aspen III ICP HT	ASH-Mattson-Asher (WETMTNZ34)
11359	300mmFAB	2089	WETMTNZ35	Mattson	Aspen III ICP HT	Aspen III ICP Asher -WETMTNZ35
11301	300mmFAB	W052228	WETTELZ37	TEL	Expedius	UW300 SPOW / SC1 / HCI / Driver
12029	300mmFAB	W072380	WETTELZ34	TEL	Expedius	WET-TEL-SPOM/SC1/HCI/Driver(WETTELZ37)
11391	300mmFAB	W052243	WETTELZ46	TEL	Expedius	UW300 BSG / cold SC1 / HCI / Driver
11363	300mmFAB	W052245	WETTELZ48	TEL	Expedius	UW300 HFEG / cold SC1 / HCI / Driver WETTELZ48
10540	300mmFAB	L00000555179	DIFTELZ02	TEL	303i	303i HIGH TEMP ANNEAL (PREA)
12947	300mmFAB	L00000775165	DIFTELZ06	TEL	303i	FUR-TEL-OXID UNDOPED-DIFTELZ06
10354	300mmFAB	L00000515004	DIFTELZ07	TEL	303i	TEL 303i: OXIDATION UNDOPED (OXIUD)
10541	300mmFAB	L00000545134	DIFTELZ08	TEL	303i	303i: OXIDATION UNDOPED (OXIUD)
11654	300mmFAB	L000005Z5428	DIFTELZ11	TEL	303i	FUR-TEL-OXIDATION UNDOPED-DIFTELZ11
10356	300mmFAB	L000004Z5291	DIFTELZ12	TEL	303i	TEL 303i: OXIDATION DOPED (OXIAS)
10634	300mmFAB	L00000555178	DIFTELZ13	TEL	303i	303i: Oxidation Doped (oxias)

12057 300mmFAB	L000006X5329	DIFTELZ17	TEL	303i	FUR-TEL-OXIDATION DOPED (OXIAS)-DIFTELZ17
12060 300mmFAB	L000006X5330	DIFTELZ27	TEL	303i	FUR-TEL-TEOS UNDOPEDED (DIFTELZ27)
11319 300mmFAB	406983	ETC-AMTZ05	AMAT	DPS2	DPS2 AMAT Poly Etch
10394 300mmFAB	F53494	ETCLAMZ01	LAM	Versys Poly	LAM Versys Lam Poly Etch
12035 300mmFAB	F98163	ETCLAMZ11	LAM	Versys M	ETC-LAM-Metal Etch M1/M2 (ETCLAMZ11)
12032 300mmFAB	H01157	ETCTELZ03	TEL	SCCM SE	ETC-TEL-DTMO (ETCTELZ03)
11340 300mmFAB	D11399A	FLMHDPZ11	Novellus	NVLS Speed	NVLS Speed Plasma HDP AA 2 Chmb
11298 300mmFAB	407323	FLMHDPZ21	AMAT	Ultima	Ultima Plasma HDP C1/C2 3 Chmb
12040 300mmFAB	412029	FLMHDPZ22	AMAT	Ultima	AMAT-HDP IMD 1MF 3 Chmb (FLMHDPZ22)
10408 300mmFAB	407224	FLMPECZ20	AMAT	Producer PE	AMAT Producer PE PE Silane (BSG/ARC/Silane) (3 Twi
11313 300mmFAB	408278	FLMPECZ22	AMAT	Producer PE	FIL-AMAT-PE Silane (BSG/ARC/Silane) #03-FLMPECZ22
10404 300mmFAB	407245	FLMPVDZ10	AMAT	ENDURA II	AMAT ENDURA II PVD Tungsten / CS Liner
11706 300mmFAB	411029	FLMPVDZ18	AMAT	ENDURA II	AMAT ENDURA GC W/WN PVD
12038 300mmFAB	26906	FLMSACZ11	AMAT	Producer SA	AMAT-UD 1MF w/3 Tw Chmb (FLMSACZ11)
11366 300mmFAB	D9050A	FLMTUGZ11	Novellus	DUAL ALTUS	SINGLE ALTUS MCVD TUNGSTEN 2 Chmb
10553 300mmFAB	72025	IMPAHCZ01	Axcelis	HCS	HCS High Current
12044 300mmFAB	137334	IMPVHCZ09	Varian	Vista HCP	IMP-VARIAN-High Current V80 (IMPVHCZ09) Upgrade to HCP+
10342 300mmFAB	137137	IMPVMCZ07	Varian	Vista 810EHP	VARIAN VISTA 810EHP Medium Current Implanter
10397 300mmFAB	MD-G440178	LITARFT01	TEL	LITHIUS	TEL LITHIUS 193 ARF Track
10290 300mmFAB	9662	LITDUVS01	ASML	AT:850D	ASML AT850D 248nm Scanner
12882 300mmFAB	4328	LITDUVS03	ASML	XT:850D	LIT-ASML-248 KrF Scanner-LITDUVS03XT 850F
10561 300mmFAB	2218095	LITLNS04	Nikon	SF130	SF130 I Line
12932 300mmFAB	2420011	LITLNS10	Nikon	SF150	LIT-Nikon Litho-I Line-LITLNS10
10399 300mmFAB	MD-G240180	LITLNT01	TEL	LITHIUS	TEL LITHIUS I Line Track
12933 300mmFAB	G471135	LITLNT10	TEL	LITHIUS	LIT-TEL-I-Line Track-LITLNT10
10736 300mmFAB	200506080575	MPKFTKT08	KLA	Spectral FX	Film Thickness w/Scatterometer
10736 300mmFAB	21238	MPKBFX02	AMAT	Complus 3T	PLY-AMAT-Darkfield Insp Tool-MPADFIX03
10575 300mmFAB	W23653278	MPKBFX02	KLA	2365 Brightfield Tool	2365 Brightfield Tool Brightfield Inspection Tool
13072 300mmFAB	700808602A	WETDNSZ48	DNS	SS-3000 BS Scrub	WET-DNS-Scrubber-WETDNSZ48
11355 300mmFAB	2047	WETMTNZ36	Mattson	Aspen III ICP HT	Aspen III ICP Asher-WETMTNZ36
11312 300mmFAB	994	WETSEZZ33	SEZ	DaVinci DV-34BF DSP	SEZ DaVinci DV-34BF Backside Etch
10349 300mmFAB	892	WETSEZZ35	SEZ	DaVinci DV-34BF	WET-TEL-DHF/coldSC1/HC/Driver(WETTELZ43)
12026 300mmFAB	W072382	WETTELZ43	TEL	Expedius	TEL UW300 DHF (BOE) / BHF (DHF) / Dryer
10365 300mmFAB	W052164	WETTELZ45	TEL	Expedius	TEL UW300 BSG / cold SC1 / HCI / Dryer
10368 300mmFAB	W042150	WETTELZ47	TEL	Expedius	Ultra-6225V FOUP Washer
10588 300mmFAB	100296405	WSENTGZ02	Entegris	Ultra-6225V	DaVinci DV-34BF Backside Etch
10655 300mmFAB	927	WETSEZZ36	SEZ	DaVinci DV-34BF	AMAT ENDURA II M2 / C1
10403 300mmFAB	407247	FLMPVDZ12	AMAT	Producer SA	Producer SA OZONE TEOS Doped (3 Twins)
11299 300mmFAB	407223	FLMSACZ21	AMAT	SF130	SF130 I Line
11309 300mmFAB	2218085	LITLNS06	Nikon	SF140	LIT-Nikon Litho-I Line-LITLNS09
12930 300mmFAB	2319076	LITLNS09	Nikon	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Dry
11305 300mmFAB	408412	CMPAMTZ02	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Dry
11362 300mmFAB	409210	CMPAMTZ03	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Wet
10390 300mmFAB	406875	CMPAMTZ13	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Dry
12956 300mmFAB	413908	CMPAMTZ14	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Dry
13041 300mmFAB	416269	CMPAMTZ15	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide W/ NOVASCAN 3060 Dry
12955 300mmFAB	414044	CMPAMTZ16	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide STI W/ NOVASCAN 3060 Dry
13040 300mmFAB	416503	CMPAMTZ17	AMAT	REFLEXION LK	CMP AMAT Reflexion Oxide STI W/ NOVASCAN 3060 Dry
13245 300mmFAB	416197	DIFAMTZ02	AMAT	VANTAGE RTP	FUR-AMAT-ANL DRY IMPLANT-DIFAMTZ02
11315 300mmFAB	30181	DIFASMZ04	ASM	A412	A412 META
12970 300mmFAB	30308	DIFASMZ05	ASM	A412	FUR-ASM-DMETA-DIFASMA05
12972 300mmFAB	30363	DIFASMZ06	ASM	A412	FUR-ASM-DNitrile 70nm-DIFASMA06
12974 300mmFAB	30362	DIFASMZ23	ASM	A412	FUR-ASM-DPOLBO-DIFASMA23
10338 300mmFAB	2004121033	DIFAMTZ01	Mattson	HELIOS	Mattson HELIOS RTP CLEAN OX (CLNOX)

10340	300mmFAB	2004121035	DIFMATZ04	Mattson	HELIOS	Mattson HELIOS RTP HIGH-K (HKE)- DIFMATZ04
10539	300mmFAB		DIFMATZ04	Mattson	HELIOS RTP	HELIOS ANNEAL DRY IMPLANT (IMPAN)
12054	300mmFAB	20064111194	DIFMATZ07	Mattson	HELIOS	FUR-Mattson-ANNEAL DRY IMPLANT-DIFMATZ07
10632	300mmFAB	20005051036	DIFMATZ09	TEL	303i	Helios Anneal Dry Implant (impan) -DIFMATZ09
10353	300mmFAB	L000004Z5289	DIFTELZ01	TEL	303i	303i Oxidation Undoped (oxidu)
10633	300mmFAB	L00000585262	DIFTELZ09	TEL	303i	FUR-OXIDATION DOPED (OXIAS)-DIFTELZ18
12058	300mmFAB	L00000615040	DIFTELZ18	TEL	303i	FUR-OXIDATION UNDOPED (DIFTELZ19)
12059	300mmFAB	L000006Y5347	DIFTELZ19	TEL	303i	FUR-TEL-UNDOPED (TEOS)-DIFTELZ28
13088	300mmFAB	L00000815002	DIFTELZ28	TEL	303i	FUR-TEL-UNDOPED (TEOS)-DIFTELZ29
13248	300mmFAB	L00000815004	DIFTELZ29	TEL	303i	TEL 303i; POLYIMIDE CURE (IMID)
10363	300mmFAB	L00000515006	DIFTELZ32	TEL	303i	TEL 303i; NITRIDE THICK (NITCK)
10357	300mmFAB	L000004Z5290	DIFTELZ36	TEL	303i	303i NITRIDE THICK (NITCK)
10637	300mmFAB	L00000585263	DIFTELZ38	TEL	303i	303i NITRIDE THICK (NITCK)
11332	300mmFAB	L000005X5321	DIFTELZ39	TEL	303i	TEL 303i NITRIDE THIN (NITHIN)
10358	300mmFAB	L00000515009	DIFTELZ44	TEL	303i	TEL 303i NITRIDE HIGH TEMP (NITHT)
10638	300mmFAB	L00000585261	DIFTELZ45	TEL	303i	303i NITRIDE HIGH TEMP (NITHT)
10359	300mmFAB	L000004Y5287	DIFTELZ47	TEL	303i	303i NITRIDE HIGH TEMP (NITHT)
10545	300mmFAB	L00000555177	DIFTELZ49	TEL	303i	303i NITRIDE HIGH TEMP (NITHT)
11320	300mmFAB	L000005X5326	DIFTELZ51	TEL	303i	303i NITRIDE HIGH TEMP (NITHT)
12948	300mmFAB	4113830	ETCAMTZ03	AMAT	DPS2	ETC-AMAT-Poly Etch COL/IT (ETCAMTZ03)
10413	300mmFAB	406984	ETCAMTZ06	AMAT	DPS2	ETC-AMAT-Poly Etch REC 3 Chm-ETCAMTZ04
10547	300mmFAB	406986	ETCAMTZ07	AMAT	DPS2	AMAT Z06X-DPS2 AMAT Poly Etch
10417	300mmFAB	406975	ETCAMTZ10	AMAT	eMaxCT	DPS2 AMAT Poly Etch
10419	300mmFAB	407262	ETCAMTZ13	AMAT	eMaxCT	AMAT Z10X-eMaxCT AMAT Oxide Etch
10548	300mmFAB	406978	ETCAMTZ16	AMAT	eMaxCT	AMAT Z13X-eMaxCT AMAT Oxide Etch
12942	300mmFAB	4113831	ETCAMTZ17	AMAT	eMaxCT	eMaxCT AMAT Oxide Etch
10395	300mmFAB	F53670	ETCLAMZ02	LAM	Verisy Poly	ETC-AMAT-OXIDE HMO/MOX-ETCAMTZ17
11310	300mmFAB	F91966	ETCLAMZ03	LAM	Verisy Poly	LAM Verisy Lam Poly Etch
10396	300mmFAB	F55327	ETCLAMZ05	LAM	Verisy Poly	LAM Verisy Lam Poly Etch
13046	300mmFAB	F91970	ETCLAMZ10	LAM	Verisy M	ETC-LAM-Metal Etch M1/M2-ETCLAMZ13
13335	300mmFAB	F91967	ETCLAMZ14	LAM	Exelan	ETC-LAM-Metal Etch M1-ETCLAMZ14
12950	300mmFAB	F91950	ETCLAMZ17	LAM	Exelan	ETC-LAM-GB Arc Open-ETCLAMZ17
13256	300mmFAB	F113559	ETCLAMZ18	LAM	SCCM	ETC-LAM-Lam Exelan-ETCLAMZ18
10388	300mmFAB	H00583	ETCTELZ01	TEL	SCCM	TEL SCCM TEL Oxide Etch
11667	300mmFAB	H00887	ETCTELZ02	TEL	SCCM SE	TEL SCCM SE CHMO
10389	300mmFAB	H00584	ETCTELZ04	TEL	SCCM	TEL SCCM TEL Oxide Etch
12941	300mmFAB	H01312	ETCTELZ05	TEL	SCCM SE	ETC-TEL-CHMO (70) (4 Chm)-ETCTELZ05
13043	300mmFAB	H01472	ETCTELZ15	TEL	SCCM SE	ETC-TEL-C-HMO-ETCTELZ15
11382	Support-Other Split	D1057	FFIB04RC	FEI	2045/31	Strata 400 FIB
12067	Support-Other Split	D1087	FFIB05RC	FEI	2045/31	Strata 400
12951	300mmFAB	40084700	FLMALDZ12	Aviza	Celsior	PFA-FEI-FIB-FFIB05RC
13051	300mmFAB	416313	FLMHDPZ23	AMAT	Centura	FLM-AVIZA-ALD-MF w/2 Chmb-FLMALDZ12
13336	300mmFAB	416321	FLMHDPZ24	AMAT	Centura	FLM-AMAT-HDP IMD MF w/2 Chm-FLMHDPZ23
10411	300mmFAB	407313	FLMPECCZ10	AMAT	Producer PE	FLM-AMAT-HDP IMD MF w/2 Chm-FLMHDPZ24
10551	300mmFAB	407225	FLMPECCZ11	AMAT	Producer PE	AMAT Producer PE CVD Plasma Teos (2 Twins)
13050	300mmFAB	416528	FLMPECCZ24	AMAT	Producer PE	Producer PE PE Silane (BSG/ARC/Silane) (Three Twin
11342	300mmFAB	407265	FLMPECCZ31	AMAT	Producer PE	FLM-AMAT-PE SILANE MF w/3 Twn Chm-FLMPECCZ24
10402	300mmFAB	406924	FLMPVDZ11	AMAT	Producer PE	Producer PE Plasma Nitride (Two Twins) (Two Twins)
12954	300mmFAB	414137	FLMPVDZ16	AMAT	ENDURA II	AMAT ENDURA II C1M1
13244	300mmFAB	408325	FLMPVDZ20	AMAT	ENDURA II	FLM-AMAT-Tungsten w/CS Liner-FLMPVDZ16
10409	300mmFAB	407221	FLMSACZ20	AMAT	ENDURA II	FLM-AMAT-MF w/2 Chambers-FLMPVDZ20
12068	Support-Other Split	9034-04	FSEM06RC	Hitachi	Producer SA	AMAT Producer SA OZONE TEOS Doped (3 Twins)
12069	Support-Other Split	9036-03	FSEM07RC	Hitachi	S-4800	PFA-Hitachi -SEM-FSEM06RC PFA-Hitachi -SEM-FSEM07RC

11306 300mmFAB	72028	IMPAHCZ02	Axcellis	HC3	IMP - Axcellis HC3 Ultra HC LE #02
10645 300mmFAB	93043	IMPAHEZ02	Axcellis	Paradigm	Paradigm High Energy
10291 300mmFAB	93038	IMPAHEZ03	Axcellis	Paradigm	Axcellis - Paradigm High Energy Implanter
10292 300mmFAB	H04008R	IMPATAA01	Axcellis	SummitXT	SummitXT Rapid Thermal Processor RTP
10646 300mmFAB	137190	IMPVHCZ04	Varian	VISTA HC	VISTA 80HP High Current
11361 300mmFAB	137213	IMPVHCZ05	Varian	VISTA HC	VISTA HC High Current V80
12046 300mmFAB	137310	IMPVHCZ06	Varian	Viستا HCP	IMP-VARIAN-High Current V80 (IMPVHCZ06) Upgrade to HCP+
13024 300mmFAB	137471	IMPVHCZ11	Varian	Viستا HCS	IMP-VARIAN-High Current V80-IMPVHCZ11
13054 300mmFAB	137473	IMPVHCZ12	Varian	Viستا HCS	IMP-VARIAN-High Current V80-IMPVHCZ12
11346 300mmFAB	G450437	IMPVHCZ13	Varian	Viستا HCS	IMP-VARIAN-High Current V80-IMPVHCZ13
12885 300mmFAB	G471129	LITARFT03	TEL	LITHIUS	LITHIUS 193 ARF Track
10557 300mmFAB	5575	LITARFT04	TEL	LITHIUS	LIT-TEL-193 ARF Track-LITARFT04
10518 300mmFAB	2218073	LITDUVS02	ASML	AT:850D	AT 850D 248 Kf Scanner
10560 300mmFAB	2218093	LITLNS03	Nikon	SF130	Nikon - SF 130 I-Line Stepper
13058 300mmFAB	2420009	LITLNS11	Nikon	SF130	SF130 I Line
13060 300mmFAB	2420010	LITLNS12	Nikon	SF150	LIT-Nikon Litho-I Line-LITLNS11
10517 300mmFAB	G250220	LITLNT02	TEL	SF150	LIT-Nikon Litho-I Line-LITLNS12
10563 300mmFAB	G250313	LITLNT03	TEL	LITHIUS	365 I-Line Track
10564 300mmFAB	G250341	LITLNT04	TEL	LITHIUS	LITHIUS I-Line Track
11307 300mmFAB	G250439	LITLNT06	TEL	LITHIUS	LITHIUS I-Line Track
13059 300mmFAB	G471260	LITLNT11	TEL	LITHIUS	TEL-I-Line Track #06
13061 300mmFAB	G471261	LITLNT12	TEL	LITHIUS	LIT-TEL-I-Line Track-LITLNT11
200412080510	200412080510	MCKFTX09	KLA	FX100	LIT-TEL-I-Line Track-LITLNT12
MCYSRTX08	10-0509-000951	MCYSRTX08	ASYST	WAFERSORTER 2	KLA FX100 FILM THICKNESS
MDYSRTX01	10-0510-000964	MDYSRTX01	ASYST	WAFERSORTER 4	POF WAFERSORTER 4 PORT W/FLOODLIGHT
MEKFTX06	200412080502	MEKFTX06	KLA	FX100	KLA FX100 with 190SE
MEKFTX17	200412080503	MEKFTX17	KLA	FX100	KLA FX100 FILM THICKNESS - MEKFTX17
MEKQMX01	41203037	MEKQMX01	KLA	QUANTOX	KLA - QUANTOX OXIDE QUALITY MONITOR
MEKUPID06	S0107-0273	MEKUPID06	KLA	SP2	PLY-KLA-SP2-MDKUPID06
MEMSCLX02	71012191	MEMSCLX02	Metrax	Mentor (Dual Load Port)	MET-Metrax-Mentor Scale QR3- MEMSCLX02
MEVAFMX02	118	MEVAFMX02	VEECO	DIMENSION X1D	DIMENSION X1D AFF
MEYSRTX03	136	MEVAFMX02	VEECO	DIMENSION X1D	MET-VEECO-VX340 #02
MEYSRTX07	10-0509-000948	MEYSRTX07	ASYST	WAFERSORTER 2	POF ASYST WAFERSORTER 2 PORT
MFKFTX03	200412080508	MFKFTX03	KLA	FX100	WAFERSORTER 4 POF AUT-Asyst-Wafersorter 4PRT-ETC-MEYSRTX07
MFKFTX07	200708080873	MFKFTX07	KLA	FX100 with 190SE	KLA FX100 with 190SE FILM THICKNESS
MFKFTX03	200707080868	MFKFTX03	KLA	CD200 SCD w/3 Load P	MET-KLA-FILM THICKNESS-MFKFTX07
MFKRSX02	41241RS100C	MFKRSX02	KLA	FX200 w/3 Load Port	MET-KLA-FILM THICKNESS-MFKFTX03
MFKUPID07	S03070298	MFKUPID07	KLA	RS100	KLA - RS100 SHEET RESISTANCE
MFNUPIX03	1204-0257	MFNUPIX03	KLA	SP2	PLY-KLA-SP2-MFKUPID07
MFNFTRX01	ASH0400112	MFNFTRX01	Nicolet	SP1 DLS Backside Insp	KLA SP1 DLS Backside Insp Mod Particle Qual
MFPMIRX02	ams30281	MFPMIRX02	Phillips AMS	ECC 3000	Nicolet -ECO 3000 FTIR MEASUREMENT
MFR0FTX01	1-05-MPO-1494-AW-09	MFR0FTX01	Rudolph	mBFT-IR	MET-NOLA Insp Tool (In Films)-MFPMIRX02
MFRXFX01	BR71004	MFRXFX01	RIGAKU	Metapulse	FX100 with 190SE Metapulse (90nm)
MFRSRTI01		MFRSRTI01	ASYST	WAFER X300	RIGAKU WAFER X300 THIN FILMS
MFRSRTX09	10-0407-000919	MFRSRTX09	ASYST	WAFERSORTER 2	POF AUT-Asyst-Wafersorter 2Prt SIS-MFRSRTI01
MIKRSSX03	41142	MIKRSSX03	KLA	RS100	KLA - RS100 SHEET RESISTANCE
MIKUPIB05	1104-0247	MIKUPIB05	KLA	SP1 DLS Backside Insp	KLA SP1 DLS Backside Insp Mod Particle Qual
MISCVTX01	123344	MISCVTX01	SSM	6100	CV IMPLANT-CV CURVES - MISCVTX01
MITDMIX01	TP6120	MITDMIX01	THERMAWAVE	TP630	THERMAWAVE - TP630 DOSE MONITOR
MYSRTX13	10-0508-000942	MYSRTX13	ASYST	Spartan	ASYST WAFERSORTER 2 PORT
MLACDLX01	U748	MLACDLX01	AMAT	VERITY SEM	AMAT Verity CD Sem Tool
MLACDLX02	U7530	MLACDLX02	AMAT	VERITY SEM	AMAT - Verity CD SEM Tool
MLACDLX04	U774	MLACDLX04	AMAT	VERITY SEM	VERITY SEM CD SEM TOOL

12943 300mmFAB	U-7072	MLACDLX07	AMAT	VERITY2 SEM	MET-AMAT-CD SEM TOOL-MLACDLX07
12959 300mmFAB	U-7076	MLACDLX08	AMAT	VERITY2 SEM	MET-AMAT-CD SEM TOOL-MLACDLX08
10302 300mmFAB	0412-11385	MLBRTX01	BROOKS	ZARIS	BROOKS - ZARIS RETICLE HANDLER
12963 300mmFAB	V000477	MLLMAX03	Leica	LDS3300 M (DT Macro)	MET-Leica-DT Macro-MLLMAX03
10653 300mmFAB	104	MLLMIX02	Leica	LDS3300 (Combi)	MET-Leica-Macro/Micro Inspection TOOL
12962 300mmFAB	V000474	MLLMIX03	Leica	LDS3300 (Combi)	MET-Leica-Macro/Micro Insp Tool-MLLMIX03
10296 300mmFAB	34007	MLNOVRX01	Nikon	NRM3300	NIKON NRM3300 OVERLAY TOOL
11578 300mmFAB	34034	MLNOVRX03	Nikon	NRM3300	MET-Nikon Metrology-OVERLAY TOOL-MLNOVRX03 NRM3300
10315 300mmFAB	10-0407-000918	MLYSRTX05	ASYST	WAFERSORTER 2	POF ASYST WAFERSORTER 2 PORT W/FLOODLIGHT
10573 300mmFAB	100511000969	MLYSRTX06	ASYST	WAFERSORTER 2	POF WAFERSORTER 2 PORT W/FLOODLIGHT
10333 300mmFAB	T2013	MPADFX02	AMAT	Complus 2 upgrade to C-AMAT	Complus 2 Darkfield Inspection Tool
10574 300mmFAB	W1008	MPADRSF02	AMAT	SEMVISION G3	SEMVISION G3 Defect Review Tool
10344 300mmFAB	W23653270	MPKBRFX01	KLA	2365 Brightfield Tool	KLA 2365 Brightfield Tool Brightfield Inspection
13117 300mmFAB	1141186	MPKDFX12	KLA	PUMA-9130	PLY-KLA-PUMA 9130-MPKDFIX12
10316 300mmFAB	10-0510-000956	MPYSRTX11	ASYST	WAFERSORTER 2	POF ASYST WAFERSORTER 2 PORT
10577 300mmFAB	10-0511-000974	MPYSRTX17	ASYST	Spartan	WAFERSORTER 4 PORT
10422 300mmFAB	CX044	MSGFOPX01	August Technol	CV9812	August Technologies CV9812 FOUP Inspection Tool
10317 300mmFAB	10-0507-000924	MSYSRTX14	ASYST	Spartan	ASYST WAFERSORTER 2 PORT
10318 300mmFAB	10-0507-000924	MSYSRTX15	ASYST	Spartan	ASYST WAFERSORTER 2 PORT
10578 300mmFAB	10-0510-000955	MSYSRTX16	ASYST	Spartan	WAFERSORTER 2 PORT (w/Spin Load)
10305 300mmFAB	41141	MWKRSSX04	KLA	RS100	KLA - RS100 SHEET RESISTANCE-MWKRSSX04
10319 300mmFAB	10-0509-000950	MWYSRTX19	ASYST	WAFERSORTER 2	POF ASYST WAFERSORTER 2 PORT
10748 300mmProbe	F24077HZ	PFAACC18A	Accretech	UF3000	UF3000 For T5571P conversion
10749 300mmProbe	F24079HZ	PFAACC18B	Accretech	UF3000	UF3000 For T5571P conversion
10750 300mmProbe	F24076HZ	PFAACC19A	Accretech	UF3000	UF3000 For T5571P conversion
10751 300mmProbe	F24078HZ	PFAACC19B	Accretech	UF3000	UF3000 For T5571P conversion
10579 300mmProbe	F24084FZ	PFAACC20B	Accretech	UF3000	UF3000 For T5571P conversion
10580 300mmProbe	F24085FZ	PFAACC21A	Accretech	UF3000	UF3000 For T5571P conversion
10581 300mmProbe	F24082FZ	PFAACC21B	Accretech	UF3000	UF3000 For T5571P conversion
10582 300mmProbe	F24083FZ	PFAACC22A	Accretech	UF3000	UF3000 For T5571P conversion
10454 300mmProbe	F24006EZ	PFAACC22B	Accretech	UF3000	UF3000 for T5571P conversion
10455 300mmProbe	F24003EZ	PFAACC23A	Accretech	UF3000	UF3000 for T5571P conversion
10452 300mmProbe	F24006EZ	PFAACC23B	Accretech	UF3000	UF3000 for T5571P conversion
10453 300mmProbe	F24004EZ	PFAACC24A	Accretech	UF3000	UF3000 for T5571P conversion
10450 300mmProbe	F24044DZ	PFAACC24B	Accretech	UF3000	UF3000 for T5571P conversion
10451 300mmProbe	F24043DZ	PFAACC25A	Accretech	UF3000	UF3000 for T5571P conversion
10448 300mmProbe	F24042DZ	PFAACC25B	Accretech	UF3000	UF3000 for T5571P conversion
10449 300mmProbe	F24041DZ	PFAACC26A	Accretech	UF3000	UF3000 for T5571P conversion
10444 300mmProbe	F24031AZ	PFAACC26B	Accretech	UF3000	UF3000 for T5571P conversion
10445 300mmProbe	F24030AZ	PFAACC28A	Accretech	UF3000	UF3000 for T5571P conversion
10446 300mmProbe	F24029AZ	PFAACC28B	Accretech	UF3000	UF3000 for T5571P conversion
10447 300mmProbe	F24028AZ	PFAACC29A	Accretech	UF3000	UF3000 for T5571P conversion
11406 300mmProbe	F24098BA	PFAACC30A	Accretech	UF3000	PRB - New Tester for PFAACC30A
11407 300mmProbe	F24097BA	PFAACC30B	Accretech	UF3000	PRB - New Tester for PFAACC30B
11402 300mmProbe	F24097BA	PFAACC31A	Accretech	UF3000	PRB - New Tester for PFAACC31A
11799 300mmProbe	F24098BA	PFAACC31B	Accretech	UF3000	UF3000 Accretech Wafer Probing machine
11403 300mmProbe	F24098BA	PFAACC32A	Accretech	UF3000	PRB - New Tester for PFAACC32A
11800 300mmProbe	F24098BA	PFAACC32B	Accretech	UF3000	UF3000 for new tester
11351 300mmProbe	F24010LZ	PFAACC32A	Accretech	UF3000	PRB - Accretech-For new tester-PFAACC32A
11828 300mmProbe	F24010LZ	PFAACC32B	Accretech	UF3000	UF3000 for new tester
11352 300mmProbe	F24011LZ	PFAACC32B	Accretech	UF3000	PRB-Accretech-For new tester-PFAACC32B
11829 300mmProbe	F24011LZ	PFAACC33A	Accretech	UF3000	UF3000 for new tester
11353 300mmProbe	F24008LZ	PFAACC33A	Accretech	UF3000	PRB-Accretech-For new tester-PFAACC33A
11831 300mmProbe	F24008LZ	PFAACC33A	Accretech	UF3000	UF3000

11354	300mmProbe	PFAACC33B	Acrotech	UF3000	UF3000 for new tester
11832	300mmProbe	PFAACC33B	Acrotech	UF3000	PRB-Accretech-For new tester-PFAACC33B
10442	300mmProbe	PRBMP001	Acrotech	UF3000	Parametric prober
12898	300mmProbe	PRBMP002	Acrotech	UF3000	Param-Accretech-Prober-PRBMP002
10439	300mmProbe	PRBMT001	Agilent	4072B	Parametric tester (MO)
10443	300mmProbe	F24002AZ	Acrotech	UF3000	Parametric prober
10458	300mmProbe	F24005DZ	Acrotech	UF3000	UF3000A Parametric prober w/Cognex BS Barcode Read
10459	300mmProbe	F24026DZ	Acrotech	UF3000	UF3000A Parametric prober w/Cognex BS Barcode Read
11387	300mmProbe	F24010AA	Acrotech	UF3000	UF3000A Parametric Prober
12894	300mmProbe	F24059BB	Acrotech	UF3000	Param-Accretech-Prober-PRBTVP006
12896	300mmProbe	F24058BB	Acrotech	UF3000	Param-Accretech-Prober-PRBTVP007
12896	300mmProbe	F24071DB	Acrotech	UF3000	PARAM-Accretech-Param Prober-PRBTVP008
10440	300mmProbe	JP10L00249	Agilent	4072B	Parametric tester (MO)
10456	300mmProbe	JP10L00271	Agilent	4072B	Parametric tester
10457	300mmProbe	JP10L00273	Agilent	4072B	Parametric tester
11388	300mmProbe	JP10L00338	Agilent	4072B	4072B Parametric tester
11396	300mmProbe	JP10L00336	Agilent	4072B	4072B Parametric tester
12893	300mmProbe	JP10L00437	Agilent	4072B	Param-Agilent-Tester-PRBTVT006
12895	300mmProbe	JP10L00438	Agilent	4072B	Param-Agilent-Tester-PRBTVT007
12895	300mmProbe	JP10L00469	Agilent	4072B	PARAM-Agilent-Param Tester-PRBTVT008
10435	Support-Other Split	219821	Oxford Instrumei	PlasmaLab	uetch300
10823	Support-Other Split	219822	Oxford Instrumei	PlasmaLab	uetch300
10345	300mmFAB	630300107	DNS	FC-3000	P-Lab800 300mm Etcher-RIE04RB
10346	300mmFAB	630300108	DNS	FC-3000	DNS FC3000 - PHO / HF / SC1 / Dryer
11316	300mmFAB	630300110A	DNS	FC-3000	DNS FC-300 BHF / PHO / Dryer
11797	300mmFAB	700808399A	DNS	SS-3000 BS Scrub	FC-300 BHF / PHO / PHO / Dryer
11617	300mmFAB	700808417A	DNS	SS-3000 BS Scrub	WETS-DNS-Pre-Litho Clean/Scrub-WETDNSZ37
13038	300mmFAB	MT3070	DNS	SS-3000 BS Scrub	Wets - Dai Nippon Screen SS-3000 Scrubber
13037	300mmFAB	MT3071	Mattson	Suprema	ASH-Mattson-Asher-WETMTNZ31
10584	300mmFAB	1343	Mattson	Suprema	ASH-Mattson-Asher-WETMTNZ32
10337	300mmFAB	1339	Mattson	Aspen III ICP HT	Aspen III ICP Asher-WETMTNZ37
10336	300mmFAB	1340	Mattson	Aspen III ICP HT	Mattson Aspen III ICP Asher-WETMTNZ38
11356	300mmFAB	2050	Mattson	Aspen III ICP HT	Mattson Aspen III ICP Asher-WETMTNZ39
11323	300mmFAB	2048	Mattson	Aspen III ICP HT	Aspen III ICP Asher
10654	300mmFAB	1341	Mattson	Aspen III ICP HT	Mattson-Aspen III ICP #05
10585	300mmFAB	1361	Mattson	Aspen III ICP HT	Aspen III ICP Asher
10586	300mmFAB	1342	Mattson	Aspen III ICP HT	Aspen III ICP Asher
12036	300mmFAB	1138	Mattson	Aspen III Strip	Aspen III ICP Asher
11321	300mmFAB	985	SEZ	DaVinci DV-34BF	ASH-Transfer Asher from QD3 (WETMTNZ51)
13144	300mmFAB	T239199	Semitoil	Raider sp312	SEZ-DaVinci DV-34BF #04
11302	300mmFAB	W052235	TEL	Expedius	WET-Semitoil-Raider 312-WETSTIZ32
12030	300mmFAB	W072381	TEL	Expedius	UW300 SPOW / SC1 / HCl / Dryer
12938	300mmFAB	W072520	TEL	Expedius	WET-TEL-SPOM/SC1/HCl/Dryer(WETTELZ38)
10369	300mmFAB	W052162	TEL	Expedius	WET-TEL-SPOM/SC1/HCl/Dry-WETTELZ39
11393	300mmFAB	W052244	TEL	Expedius	TEL UW300 DHF / hot SC1 / HCl / Dryer
12027	300mmFAB	W072383	TEL	Expedius	TEL UW300 DHF / cold SC1 / HCl / Dryer
10364	300mmFAB	W042149	TEL	Expedius	UW300 DHF / cold SC1 / HCl / Dryer
12936	300mmFAB	W042142	TEL	Expedius	WET-TEL-DHF/coldSC1/HCl/Dryer(WETTELZ44)
12936	300mmFAB	W072513	TEL	Expedius +	TEL UW300 HFEG / cold SC1 / HCl / Dryer
12946	300mmFAB	W072519	TEL	Expedius +	WET-TEL-DHF/coldSC1/HCl/Dry-WETTELZ56
10421	300mmFAB	1002596399	Entegris	Ultra-6225V	WET-TEL-SOM/ColdSC1/HCl/Dry-WETTELZ59
11622	300mmFAB	ABATEMENT01	BOC Edwards	Ultra-6225V	Entegris Ultra-6225V FOUP Washer
11623	300mmFAB	ABATEMENT02	BOC Edwards	Ultra-6225V	BOC PUMP FUR Abatement #1
					BOC PUMP FUR Abatement #2



11624	300mmFAB	ABATEMENT03	BOC Edwards	BOC PUMP FUR Abatement #3
11625	300mmFAB	ABATEMENT04	BOC Edwards	BOC PUMP FUR Abatement #4
11626	300mmFAB	ABATEMENT05	BOC Edwards	BOC PUMP FUR Abatement #5
11627	300mmFAB	ABATEMENT06	BOC Edwards	BOC PUMP FUR Abatement #6
11628	300mmFAB	ABATEMENT07	BOC Edwards	BOC PUMP FUR Abatement #7
11629	300mmFAB	ABATEMENT08	BOC Edwards	BOC PUMP FUR Abatement #8
11630	300mmFAB	ABATEMENT09	BOC Edwards	BOC PUMP FUR Abatement #9
11631	300mmFAB	ABATEMENT10	BOC Edwards	BOC PUMP FUR Abatement #10
10617	300mmFAB	AMHMURAS01	Murata	Stocker 26' 5 Bay
10522	300mmFAB	AMHMURAS02	Murata	Stocker 17' 9 Bay
10375	300mmFAB	AMHMURAS03	Murata	Stocker 26' 5 Bay
10523	300mmFAB	AMHMURCA01	Murata	Murata Machinery Ltd. Stocker AUT
10618	300mmFAB	AMHMURCA02	Murata	Stocker 17' 6 Bay
10374	300mmFAB	AMHMURCB01	Murata	Stocker 26' 5 Bay
12846	300mmFAB	AMHMURDA01	Murata	Stocker 26' 7 Bay
10371	300mmFAB	AMHMURDA02	Murata	Stocker 17' 11 Bay
10524	300mmFAB	AMHMURDB01	Murata	Stocker 26' 9 Bay
10525	300mmFAB	AMHMURDB02	Murata	Stocker 26' 9 Bay
12848	300mmFAB	AMHMURDB03	Murata	Stocker 26' 9 Bay
10619	300mmFAB	AMHMUREA01	Murata	Stocker 17' 13 Bay
10373	300mmFAB	AMHMUREB01	Murata	Stocker 26' 9 Bay
12847	300mmFAB	AMHMUREB02	Murata	Stocker 26' 9 Bay
10620	300mmFAB	AMHMUREC01	Murata	Stocker 17' 13 Bay
12850	300mmFAB	AMHMUREC02	Murata	Stocker 26' 6 Bay
10378	300mmFAB	AMHMURFA01	Murata	Stocker 26' 9 Bay
12849	300mmFAB	AMHMURFA02	Murata	Stocker 26' 5 Bay
12852	300mmFAB	AMHMURFB01	Murata	Stocker 17' 9 Bay
10526	300mmFAB	AMHMURFB02	Murata	Stocker 26' 9 Bay
10527	300mmFAB	AMHMURFC02	Murata	Stocker 26' 9 Bay
10381	300mmFAB	AMHMURIM01	Murata	Stocker 17' 13 Bay
12853	300mmFAB	AMHMURIM03	Murata	Stocker 14' 11 Bay
10621	300mmFAB	AMHMURIM04	Murata	Stocker 14' 10 Bay
10622	300mmFAB	AMHMURIM05	Murata	Stocker 14' 10 Bay
10377	300mmFAB	AMHMURLA02	Murata	Stocker 26' 9 Bay
10528	300mmFAB	AMHMURLA03	Murata	Stocker 17' 9 Bay
12851	300mmFAB	AMHMURLB01	Murata	Stocker 26' 9 Bay
10529	300mmFAB	AMHMURLB02	Murata	Stocker 26' 9 Bay
10623	300mmFAB	AMHMURLC01	Murata	Stocker 17' 13 Bay
10624	300mmFAB	AMHMURLC02	Murata	Stocker 26' 9 Bay
10376	300mmFAB	AMHMURPL02	Murata	Stocker 26' 9 Bay
10625	300mmFAB	AMHMURPR01	Murata	Stocker 14' 10 Bay
10530	300mmFAB	AMHMURWA01	Murata	Stocker 26' 7 Bay
10372	300mmFAB	AMHMURWA02	Murata	Stocker 26' 9 Bay
10531	300mmFAB	AMHMURWA03	Murata	Stocker 17' 13 Bay
10532	300mmFAB	AMHMURWB01	Murata	Stocker 26' 9 Bay
10533	300mmFAB	AMHMURWB02	Murata	Stocker 26' 9 Bay
10382	300mmFAB	AMHMURWB03	Murata	Stocker 26' 9 Bay
10626	300mmFAB	AMHMURWS02	Murata	Stocker 17' 13 Bay
10380	300mmFAB	AMHMURWS03	Murata	Stocker 14' 8 Bay
11536	200mmFAB	ASMLEAKDET01	ASM	Murata Machinery Ltd. Stocker AUT
11537	200mmFAB	ASMLEAKDET02	ASM	Murata Machinery Ltd. Stocker AUT
11539	300mmFAB	ASMLEAKDET03	ASM	Stocker 14' 11 Bay
11551	300mmFAB	ASMLEAKDET04	ASM	Leak Detector
1579	Support-Other Split	BNC:H02RG	Karl Suss	Leak Detector

1581	Support-Other Split	4746	BNCH03RG	Karl Suss	Parametric Bench Test System - 4746 - BNCH03RG
10437	Support-Other Split	15906	CVH04RG	SUSS Microtec	PA300
10438	Support-Other Split	15916	CVD01RB	Trion	153F-4-100-2
12859	300mmFAB	HLD0560345	DIFLC02	Alcatei	ASM 182 TD+ HeLeak C FUR-Alcatei-ASM 182 TD+ He Leak Detector
12860	300mmFAB	HLD0660480	DIFLC03	Alcatei	ASM 182 TD+ HeLeak C FUR-Alcatei-ASM 182 TD+ He Leak Detector
12863	300mmFAB		DIFSC01	MKS	FUR-MKS-Portable Vacuum Calibration System
12864	300mmFAB		DIFSC02	MKS	FUR-MKS-Portable Vacuum Calibration System
1584	Support-Other Split	Y24G-358928-Y	DOVN04SA	Blue M Electric	Oven, Blue M Model DCC 366E-DOVN04SA
1585	Support-Other Split	Y24-358927-YG	DOVN05SA	Blue M Electric	Oven, Blue M Model DCC 366E
10641	300mmProbe		EMMI03RH	SUSS Microtec	PA300DSP Probe stations-emission microscope
1588	Support-Other Split	Y14G-358936-YG	EOVN02SA	Blue M Electric	Oven, Blue M Model CC27CE
1589	Support-Other Split	146818	EOVN03SA	Nabertherm	Oven-High Temp, Nabertherm Model-EOVN03SA
1615	Support-Other Split	N/A	EOVN05SB	Blue M Electric	Metal Parts Oven, Blue M Model 1406
1617	Support-Other Split	N/A	EOVN06SB	Blue M Electric	OVEN02FA Oven-Metal Parts 1406
1590	Support-Other Split	970814460	EPBB05SA	Plasti-Grit System	Bead Blaster-Plastic,Composition Model-EPBB05SA
12862	300mmFAB	HLD0660482	ETCLC01	Alcatei	ASM 182 TD+ HeLeak C FUR-Alcatei-ASM 182 TD+ He Leak Detector
1591	Support-Other Split	48678	FDBB04SA	Zero Products	Bead Blaster-Dry, Zero Model Pulsar VI
1593	Support-Other Split	Z23G-363313-NH	FOVN07SA	Blue M Electric	Oven, Blue M Model-FOVN07SA
1714	Support-Other Split	N/A	FPOLO1RB	Buehler	Polisher - Buehler
1720	Support-Other Split	N/A	GRDR01RB	Buehler	Grinder - Buehler
11525	300mmFAB	48679 NH	IDBB03SA	Zero Products	Bead Blaster-IDBB03SA
11526	300mmFAB	46332412	IMPABAT01	BOC Edwards	Hox -4 W/Bypass module, Emim
11527	300mmFAB	46332413	IMPABAT02	BOC Edwards	Hox -4 W/Bypass module, Emim
13035	300mmFAB		IMPVVPB01	Ross	Hox -4 W/Bypass module, Emim
1063	Support-Other Split	506163	INSP01HB	Leica	IMP-Ross-VMP300 Hi Volt Probe-IMPVVPB01
1603	Support-Other Split	Z19G-362936-ZG	IOVN01SA	Blue M Electric	Microscope - 506163 - LEICA MICROSYSYSTEMS
14426	300mmFAB		MCS	Murata	Oven, Blue M Model-IOVN01SA
1620	Support-Other Split	N/A	OVEN04FA	Blue M Electric	AUT-Murata-Material Control System (MCS)
1622	Support-Other Split	N/A	OVEN05FC	Blue M Electric	Oven-Films Parts, Blue M Model-OVEN04FA
10461	300mmProbe	15907	PA300RH	SUSS Microtec	Oven-Films Parts, Blue M Model 336
1735	Support-Other Split	N/A	PIPS01RB	Gatan	PFA-Karl Suss-Probe stations (Stand alone system)
1737	Support-Other Split	N/A	PIPS02RB	Gatan	Precision Ion Polishing System - GATAN, INC.
1738	Support-Other Split		PLTB01RB	Buehler	Table With Polishers - ECHOMET-PLTB01RB
1739	Support-Other Split		PLTB03RB	Buehler	Table With Polishers - ECHOMET-PLTB03RB
1740	Support-Other Split		PLTB04RB	Buehler	Table With Polishers - ECHOMET-PLTB04RB
1266	300mmProbe	N/A	SEAL01HA	Accuseal	Vacuum Sealer - N/A - Accuseal-SEAL01HA
1759	Support-Other Split	N/A	STSC01RB	Leica	Microscope - LEICA
1760	Support-Other Split	2585	STSC02RB	Leica	Microscope STEREOZOOM 4 LEICA
11533	200mmFAB		VACLEAKDET01	MKS	MKS Vacuum Leak Detector
11534	200mmFAB		VACLEAKDET02	MKS	MKS Vacuum Leak Detector
13074	300mmFAB		VACLEAKDET03	MKS	MKS Vacuum Leak Detector
12855	300mmFAB		VEHICLE	Murata	AUT-Murata-Interbay Vehicle (20) 9k Ramp
12861	300mmFAB		VEHICLES (15)	Murata	AUT-Murata-Interbay Vehicle(15) Phase II
10657	300mmFAB		WETLC01	Alcatei	FUR-Alcatei-ASM 182 TD+ He Leak Detector
12918	300mmFAB		WSBATHZ01	Alum-a-lift	FOUP Recovery Bench
10607	300mmFAB		WSLIFT01	Rion	WETS-Alum-a-lift-Cleanroom FOUP Lift-WSLIFT01
11541	300mmFAB		WSRONZ01	BOC Edwards	FOUP LPC SPC
11542	300mmFAB			BOC Edwards	FUR Abatement #11
11543	300mmFAB			BOC Edwards	FUR Abatement #12
11544	300mmFAB			BOC Edwards	FUR Abatement #13
11545	300mmFAB			BOC Edwards	FUR Abatement #14
					FUR Abatement #15

11546 300mmFAB	BOC Edwards	FUR Abatement #16
11547 300mmFAB	BOC Edwards	FUR Abatement #17
11548 300mmFAB	BOC Edwards	FUR Abatement #18
11549 300mmFAB	BOC Edwards	FUR Abatement #19
11550 300mmFAB	BOC Edwards	FUR Abatement #20
12858 300mmFAB	Murata	AUT-Murata-Design & Proj Mgmt Service
14427 300mmFAB	Murata	AUT-MUR-Installation Phase II Sikrs&UTS
14428 300mmFAB	Murata	AUT-Murata-Design & Proj Mgmt Service
10842 300mmFAB	Murata	Murata interbay track
4770 Support-Other Split	Tektronix	Tektronix Oscilloscope IGHZ
4771 Support-Other Split	Tektronix	Tektronix Oscilloscope 500 mhz Probe
4772 Support-Other Split	Tektronix	Tektronix Oscilloscope 200 mhz P probe
4773 Support-Other Split	Tektronix	Tektronix Oscilloscope 200 mhz Probe
4774 Support-Other Split	Tektronix	Tektronix Oscilloscope 200 mhz P probe
4775 Support-Other Split	Tektronix	Tektronix Oscilloscope 200 mhz Probe
4776 Support-Other Split	Tektronix	Tektronix Oscilloscope 200 mhz Probe
4777 Support-Other Split	Tektronix	Tektronix Cable Tester
10543 300mmFAB	TEL	303i
10322 300mmFAB	KLA	FX100 W/ ACCUFILM
11389 300mmFAB	AMAT	SEMVISION G3 with ED SEMFILM FILM THICKNESS
12845 300mmProbe	Camtek	PRB-Camtek-Auto Inspection-PRBCAM01
11814 300mmFAB	DNS	WETS-DNS-Pre-Litho Clean/Scrub-WETDNSZ41

DIFTELZ37  
 MDKFTK001  
 MPADRSF03  
 PRBCAM01  
 WETDNSZ41

B011086  
 B020625  
 B061306  
 B061307  
 B061330  
 B061231  
 B061233  
 B023203  
 L00000565132  
 200411080501  
 W1028  
 82136  
 700808434A

**EXHIBIT A-2**

Item Description	Location	Location Description	Comments
Code compliance systems along with Life safety systems, TGM (Total Gas Monitoring), security, 200mm ERT (Emergency Response Team), etc.	Site	Site	<ul style="list-style-type: none"> <li>Regulatory, compliance</li> <li>Includes hardware and parts for these systems</li> </ul>
Elevator Spare Parts	Site	Site	<ul style="list-style-type: none"> <li>Elevator Mechanical Rooms</li> </ul>
Communication devices	Site	Site	<ul style="list-style-type: none"> <li>Radios, infrastructure, Nextel etc...</li> </ul>
Fab waffle floor tiles and stainless steel plating	Site	Site	<ul style="list-style-type: none"> <li>Needed to repair breeches in the floor from tool extractions</li> </ul>
All assets	CUB1/CUB2	200mm/300mm support building	<ul style="list-style-type: none"> <li>Equipment within central utility building for 200mm fab</li> <li>Office furniture (desks, chairs, cabinets, tables, etc.)</li> <li>Office support (panaboard, marker boards, phones, computers, monitors, laptops, LCD projectors, etc.)</li> <li>Office supplies (paper, pens, copier supplies, folders, notebooks, etc.)</li> <li>Housekeeping supplies (for office and lavatory cleaning)</li> </ul>
All assets except rooms B1134 (300mm hand tool room), B2151(300mm engineering support assets), B2035 (300mm misc spares)	Bxxx	1st/2nd floor B bldg: security control room, offices (~8), conference rooms (4), office supply storage, mail room, etc.	<ul style="list-style-type: none"> <li>Office furniture (desks, chairs, cabinets, tables, etc.)</li> <li>Office support (panaboard, marker boards, phones, computers, monitors, laptops, LCD projectors, etc.)</li> <li>Office supplies (paper, pens, copier supplies, folders, notebooks, etc.)</li> <li>Housekeeping supplies (for office and lavatory cleaning)</li> <li>200mm hand tools and 200mm eng support assets</li> </ul>

Item Description	Location	Location Description	Comments
All assets	K12xx	Adjacent office area to B1xxx; cubicles (~10) and offices (~14), office supply storage, Craft Storage room, GCA office, sign shop, key room, etc.	<ul style="list-style-type: none"> <li>Office furniture (desks, chairs, cabinets, tables, etc.)</li> <li>Office support (panaboard, marker boards, phones, computers, monitors, laptops, LCD projectors, etc.)</li> <li>Office supplies (paper, pens, copier supplies, folders, notebooks, etc.)</li> <li>Housekeeping supplies (for office and lavatory cleaning)</li> </ul>
200mm Clean room hangers, benches, garments, etc. for clean room access.	E2xxx	200mm Clean room gowning area	<ul style="list-style-type: none"> <li>Includes consumable items in inventory (hairnets, gloves, booties)</li> </ul>
IT Assets	K1491; Site	Main data center (K1491) and communication closets	<ul style="list-style-type: none"> <li>30 switches and 16 servers to support on going liquidation of Qimonda</li> </ul>
200mm Spare parts	E113, E191	Parts storage room on 1st floor PAT dock bldg.	<ul style="list-style-type: none"> <li>Spare parts associated with the 200mm factory tools</li> </ul>
All assets	E179, E179A, E141	Room behind secure module storage room, near main dock area	<ul style="list-style-type: none"> <li>Assets belonging to QNA (laptops, computers, servers, phones, testers, 2 probes, temperature chambers, etc.)</li> <li>Probe Cards</li> <li>Finished goods</li> </ul>
Finished goods in module distribution center	E183	Secure module storage room	
Finished wafers in shipping boxes	E195	Secure final shipping area	

**EXHIBIT B**

**THIRD PARTY ASSETS**

[See Attached]

**EXHIBIT B-1**

**RBS THIRD PARTY ASSETS**

**300mm EQUIPMENT:**

ASSET NUMBER	TOOL ID	MFG	MODEL	DESCRIPTION	SERIAL #
<b>RBS OWNED</b>					
13664	DIFTELZ03	TEL	ALPHA 303I-K	VERTICAL FURNACE, HIGH TEMP ANNEAL	L000005X5328
13669	ETCLAMZ16	LAM	EXELAN	ETCH TOOL, OXIDE, (4) 2300 FLEX CHAMBERS	F102456
13656	FLMPECZ30	APPLIED MATERIALS	PRODUCER PE	CVD SYSTEM, (3) TWIN SILANE CHAMBERS	407269
13662	IMPVMCZ05	VARIAN	VIISTA 810EHP	ION IMPLANTER, MEDIUM CURRENT	137190
13659	MPKFTKX10	KLA-TENCOR	FX100	FILM THICKNESS MEASUREMENT SYSTEM	200507080589
13660	WETTELZ33	TEL	UW300	EXPEDIUS WET TOOL, 4 BATH, SPOM / SC1 / HCL / DRYER	W052221

The 300mm equipment identified on this Exhibit B-1 is collectively referred to herein as the “RBS Equipment”.

**INFRASTRUCTURE AND TOOLING:**

Process Tools:

- (a) All upgrades, chambers and tooling related to the RBS Equipment; and
- (b) All pumps, chillers, abatement and other direct support infrastructure related to the RBS Equipment.

**OTHER ASSETS:**

(a) To the extent owned by RBS, all software source code, design environments, user interfaces, technology, and information, to the extent such items exist, and firmware, test benches, blueprints, specifications, and technical drawings (or similar information in electronic format), used by Seller in connection with the design, development, testing of, or incorporated into, the RBS Equipment);

(b) To the extent owned by RBS, all technical documentation, including all rights and interest in and to, lab journals, notebooks and programmer’s notes, data, source code, object code, development files, manufacturing, engineering and other drawings and manuals, blue

prints, designs, plans, schematics, user's guides and instructions, parts lists, technical information, design and engineering specifications and similar materials recording or evidencing information related to the RBS Equipment;

(c) To the extent RBS has a legal right to do so without incurring any cost of liability:

(i) All rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by manufacturers, suppliers or others to or for the benefit of Seller or the Third Party Owners in connection with the Assets (collectively, the "Warranty Rights");

(ii) All municipal, state, local, federal and other governmental franchises, permits, licenses, agreements, waivers and authorizations from, issued or granted by, any jurisdiction, or the portion thereof, held or used by Seller in connection with, or necessary for the use or operation of, any of the Assets, to the extent legally transferable (assuming any necessary Bankruptcy Court approval) by Seller (collectively, the "Permits");

(d) All causes of action, rights of action (except to the extent that such causes of action or rights of action relate to Excluded Liabilities) and product liability claims against other Persons that relate to the Assets, whether arising now or at any time in the future, to the extent that all or any of the foregoing are transferable, including, without limitation, transfers that require third party approval (as used herein, "Person" shall mean a corporation, limited partnership, partnership, association, trust, limited liability company, joint venture, governmental authority or natural person);

(e) All insurance proceeds and rights to insurance proceeds that relate to the Assets;  
and

(f) Copies of all files, books, records, and other information and data in RBS' possession and control, in whatever form recorded, that directly pertain to the RBS Equipment, including, without limitation, production reports and records, service and warranty records, equipment logs, and operating guides and manuals



**EXHIBIT B-2**

**OVERLAND THIRD PARTY ASSETS**

**300mm EQUIPMENT:**

ASSET NUMBER	TOOL ID	MFG	MODEL	DESCRIPTION	SERIAL #
<b>OVERLAND OWNED</b>					
14636	DIFTELZ04	TEL	ALPHA 303I-K	VERTICAL FURNACE, HIGH TEMP ANNEAL	L000006X5328
14634	DIFTELZ15	TEL	ALPHA 303I-K	VERTICAL FURNACE, OXIDATION DOPED (OXAIS)	L000005X5322
14633	MLACDLX03	APPLIED MATERIALS	VERITY SEM	CD SEM METROLOGY SYSTEM	U762
14639	WETDNSZ34	DNS	FC-3000	SCRUBBER, BACKSIDE, 4- CHAMBER	630600180A
14632	DIFTELZ14	TEL	ALPHA 303I-K	VERTICAL FURNACE, OXIDATION DOPED (OXAIS)	L00000595309

The 300mm equipment identified on this Exhibit B-2 is collectively referred to herein as the "Overland Equipment".

**INFRASTRUCTURE AND TOOLING:**

Process Tools:

- (a) All upgrades, chambers and tooling related to the Overland Equipment; and
- (b) All pumps, chillers, abatement and other direct support infrastructure related to the Overland Equipment.

**OTHER ASSETS:**

(a) To the extent owned by Overland, all software source code, design environments, user interfaces, technology, and information, to the extent such items exist, and firmware, test benches, blueprints, specifications, and technical drawings (or similar information in electronic format), used by Seller in connection with the design, development, testing of, or incorporated into, the Overland Equipment);

(b) To the extent owned by Overland, all technical documentation, including all rights and interest in and to, lab journals, notebooks and programmer's notes, data, source code, object code, development files, manufacturing, engineering and other drawings and manuals, blue prints, designs, plans, schematics, user's guides and instructions, parts lists, technical

information, design and engineering specifications and similar materials recording or evidencing information related to the Overland Equipment;

(c) To the extent Overland has a legal right to do so without incurring any cost of liability:

(i) All rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by manufacturers, suppliers or others to or for the benefit of Seller or the Third Party Owners in connection with the Assets (collectively, the "Warranty Rights");

(ii) All municipal, state, local, federal and other governmental franchises, permits, licenses, agreements, waivers and authorizations from, issued or granted by, any jurisdiction, or the portion thereof, held or used by Seller in connection with, or necessary for the use or operation of, any of the Assets, to the extent legally transferable (assuming any necessary Bankruptcy Court approval) by Seller (collectively, the "Permits");

(d) All causes of action, rights of action (except to the extent that such causes of action or rights of action relate to Excluded Liabilities) and product liability claims against other Persons that relate to the Assets, whether arising now or at any time in the future, to the extent that all or any of the foregoing are transferable, including, without limitation, transfers that require third party approval (as used herein, "Person" shall mean a corporation, limited partnership, partnership, association, trust, limited liability company, joint venture, governmental authority or natural person);

(e) All insurance proceeds and rights to insurance proceeds that relate to the Assets; and

(f) Copies of all files, books, records, and other information and data in Overland's possession and control, in whatever form recorded, that directly pertain to the Overland Equipment, including, without limitation, production reports and records, service and warranty records, equipment logs, and operating guides and manuals.

**EXHIBIT C**

**DEPOSIT ESCROW AGREEMENT**

[See Attached]

**DEPOSIT ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (this "Agreement") is dated as of the 19th day of August 2009, by and among Qimonda Richmond, LLC, a Delaware limited liability company (the "Seller"), and Texas Instruments Incorporated, a Delaware corporation (the "Purchaser"), and Wilmington Trust Company (the "Escrow Agent"), as escrow agent. Purchaser and Seller are sometimes referred to herein, collectively, as the "Interested Parties." Capitalized terms used and not defined herein shall have the respective meanings ascribed thereto in the Purchase Agreement (as defined below). The Escrow Agent shall be entitled to rely on the use of such terms in any communications received by it.

WHEREAS, Purchaser and Seller are parties to an Asset Purchase Agreement dated as of August 19, 2009 (the "Purchase Agreement"), pursuant to which an earnest money deposit in the amount of Seventeen Million Two Hundred Fifty Thousand Dollars (\$17,250,000) in cash (such amount, as it may be reduced as provided below, being referred to as the "Deposit") shall be paid by Purchaser simultaneously with the execution of the Purchase Agreement.

WHEREAS, the Interested Parties wish to engage the Escrow Agent to act, and the Escrow Agent is willing to act, as escrow agent hereunder and, in that capacity, to hold, administer and distribute the amounts deposited in escrow hereunder in accordance with, and subject to, the terms of this Agreement;

NOW THEREFORE, for valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. Deposit.

(a) Purchaser shall deliver the Deposit to the Escrow Agent simultaneously with the execution of the Purchase Agreement. The Deposit shall be applied towards the Purchase Price (or otherwise retained by Seller) or returned to Purchaser, as the case may be, in accordance with the terms set forth in the Purchase Agreement. The Deposit together with any interest, investment income or other proceeds received by the Escrow Agent from the investment thereof from time to time pursuant to Section 3 below, collectively, shall be known as the "Escrow Property." The Escrow Agent agrees to hold the Escrow Property in an account established with the Escrow Agent (the "Escrow Account"), and to administer the Escrow Property in accordance with the terms of this Agreement. If the Purchase Price provided in the Purchase Agreement is reduced pursuant to the Adjustment Mechanism, then the Deposit shall be reduced by an amount equal to ten percent (10%) of any such reduction in the Purchase Price (the "Deposit Reduction"), and Seller and Purchaser agree to promptly deliver to Escrow Agent joint written instructions that specify the dollar amount of such Deposit Reduction and direct the Escrow Agent to release the amount of the Deposit Reduction (along with the related Escrow Property) to Purchaser. Promptly following the receipt of such instructions (and in any event within three (3) business days of such receipt), the Escrow Agent shall release the Deposit Reduction (along with the related Escrow Property) to Purchaser.

2. Release from Escrow; Claims and Payments.

(a) Upon the Closing, Seller and Purchaser shall jointly deliver written instructions to the Escrow Agent stating the occurrence of the Closing and requesting the release of the Deposit to Seller. Promptly following the receipt of such instructions (and in any event within three (3) business days of such receipt), the Escrow Agent shall release the Deposit (along with the related Escrow Property) to Seller.

(b) If the Purchase Agreement is terminated pursuant to Section 8.1(a) of the Purchase Agreement, then Purchaser and Seller shall jointly deliver written instructions to the Escrow Agent for the release of the Deposit (along with the related Escrow Property) to Purchaser, whereupon the Escrow Agent shall, within three (3) business days after receiving such notice, deliver the Deposit (along with the related Escrow Property) to Purchaser by wire transfer of immediately available funds to an account designated by Purchaser in the Deposit Escrow Agreement.

(c) If the Purchase Agreement is terminated pursuant to Section 8.1(b), (c), (d), (e) or (i) of the Purchase Agreement and not pursuant to Section 8.1(f), (g) or (h) of the Purchase Agreement, then Purchaser shall deliver written instructions to the Escrow Agent that (i) identify such Section by which the Purchase Agreement is being terminated and (ii) instruct the Escrow Agent to release the Deposit (along with the related Escrow Property) to Purchaser, whereupon the Escrow Agent shall, within three (3) business days after receiving such notice, deliver the Deposit (along with the related Escrow Property) to Purchaser by wire transfer of immediately available funds to an account designated by Purchaser in the Deposit Escrow Agreement.

(d) If Purchaser terminates the Purchase Agreement pursuant to Section 8.1(f) or (g) of the Purchase Agreement, then Purchaser shall deliver a claim notice (a "Purchaser Claim Notice") to Seller and the Escrow Agent for the release of the Deposit (along with the related Escrow Property) to Purchaser. Such Purchaser Claim Notice shall generally describe the basis for Purchaser's termination of the Purchase Agreement pursuant to Section 8.1(f) or (g) of the Purchase Agreement. If Seller disputes the validity of such Purchaser Claim Notice, Seller shall give written notice of such dispute to Purchaser, with a copy to the Escrow Agent, within ten (10) business days after the delivery of such Purchaser Claim Notice by Purchaser to Seller. If Seller fails to respond to such Purchaser Claim Notice within such ten (10) business day period or if Seller notifies the Escrow Agent that there is no dispute with respect to such Purchaser Claim Notice, then the Escrow Agent shall immediately give Seller written notice of the impending release of the Deposit to Purchaser and shall release the Deposit (along with the related Escrow Property) to Purchaser within five (5) business days following the expiration of such ten (10) business day period. To the extent that there is a dispute with a Purchaser Claim Notice, such dispute and release of the Deposit shall be settled in accordance with Section 2(f) below.

(e) If Seller terminates the Purchase Agreement, pursuant to Section 8.1(h) of the Purchase Agreement, then Seller shall deliver a claim notice (a "Seller Claim Notice") to Purchaser and the Escrow Agent for the release of the Deposit (along with the related Escrow Property) to Seller. Such Seller Claim Notice shall generally describe the basis for Seller's

termination of the Purchase Agreement. If Purchaser disputes the validity of such Seller Claim Notice, then Purchaser shall give written notice to Seller, with a copy to the Escrow Agent, within ten (10) business days after the delivery of such Seller Claim Notice by Seller to Purchaser. If Purchaser (A) fails to respond to such Seller Claim Notice within such ten (10) business day period or (B) notifies the Escrow Agent that there is no dispute with respect to such Seller Claim Notice, then the Escrow Agent shall immediately give Purchaser written notice of the impending release of the Deposit to Seller and shall release the Deposit (along with the related Escrow Property) to Seller within five (5) business days following the expiration of such ten (10) business day period. To the extent that there is a dispute with a Seller Claim Notice, such dispute and release of the Deposit shall be settled in accordance with Section 2(f) below.

(f) To the extent there is a dispute with respect a Purchaser Claim Notice or Seller Claim Notice, the Interested Parties shall use their reasonable efforts to resolve such dispute within ten (10) days after the delivery of the applicable Purchaser Claim Notice or Seller Claim Notice, as the case may be. To the extent such Interested Parties are able to resolve any such dispute within such ten (10) day period, the Interested Parties shall thereafter deliver joint written instructions to the Escrow Agent requesting the release of the Deposit to Purchaser or Seller, as the case may be, and promptly following the receipt of such instructions (and in any event within three (3) business days of such receipt), the Escrow Agent shall release the Deposit (along with the related Escrow Property) to Purchaser or Seller, as the case may be. If no such resolution can be reached after such negotiations during such ten (10) day period, such dispute shall be resolved in accordance with Section 10.12 of the Purchase Agreement. Upon any such resolution in accordance with Section 10.12 of the Purchase Agreement, the Interested Parties shall thereafter deliver joint written instructions to the Escrow Agent requesting the release of the Deposit to Purchaser or Seller, as the case may be, and promptly following the receipt of such instructions (and in any event within three (3) business days of such receipt), the Escrow Agent shall release the Deposit (along with the related Escrow Property) to Purchaser or Seller, as the case may be, in accordance with such joint instructions..

3. Investment of Funds. The Escrow Agent shall, as soon as reasonably practical after it receives the Escrow Deposit from Purchaser, invest the Escrow Property, at the joint written direction of Seller and Purchaser, in bank money market accounts, bank short-term certificates of deposit, short-term United States Government securities, or other interest-bearing accounts and funds, provided that any such certificates of deposit and short-term securities shall have a maturity not more than five (5) days after purchase. Absent its timely receipt of such specific written investment instruction from Seller and Purchaser, the Escrow Agent shall invest all of the Escrow Deposit in the Service class shares of the U.S. Government Portfolio of the Wilmington family of mutual funds for which the Escrow Agent on any affiliate of the Escrow Agent may serve as investment advisor or other service provider. Seller acknowledges that shares in this mutual fund are not obligations of Escrow Agent, are not deposits, and are not insured by the FDIC. Escrow Agent or its affiliates are compensated by these mutual funds for services rendered in its capacity as investment advisor, custodian, and/or transfer agent. Escrow Agent or its affiliates are also compensated by these mutual funds for providing shareholder services, and such compensation is both described in detail in the prospectus for the fund and is in addition to the compensation paid to Escrow Agent hereunder. The Escrow Agent shall not be responsible for any loss suffered from any investment, including, without limitation, any market loss on any investment liquidated prior to maturity in order to make a payment required

hereunder, except any loss resulting from its gross negligence, willful misconduct or failure to invest the Escrow Property in accordance with the written direction of Seller and Purchaser provided pursuant to this Section 3. All earnings received from the investment of the Escrow Property shall be credited to, and shall become a part of, the Escrow Account (and any losses on such investments shall be debited to the Escrow Account).

4. Interest, Etc.

(a) The Interested Parties hereto agree that (i) the Escrow Account established by this Agreement shall be treated for federal income tax purposes as a trust, all of which is deemed to be owned by Seller, under subpart E of Part I of subchapter J of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) Seller shall report for federal, state and local income tax purposes all income or other tax items derived from the investment of or otherwise with respect to the Escrow Property.

(b) Upon disbursement of any portion of the Escrow Property (i) to Purchaser, the Escrow Agent shall disburse to Purchaser any interest or other income earned with respect to the portion so disbursed and such payments shall be treated for tax purposes as an expense of Seller and as income to Purchaser, and (ii) to Seller, the Escrow Agent shall disburse to Seller any interest, investment income or other proceeds earned with respect to the portion so disbursed.

5. Certification of Taxpayer Identification Number and Withholding.

(a) Each of the Interested Parties agrees to provide the Escrow Agent with (i) its certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon the execution and delivery of this Agreement. The Interested Parties understand that, in the event their tax identification numbers are not certified to the Escrow Agent, the Code, as amended from time to time, may require withholding of a portion of any interest or other income earned on the investment of the Escrow Property.

(b) The Escrow Agent shall deduct and withhold from the consideration otherwise payable pursuant to this Agreement to Purchaser or Seller such amounts as the Escrow Agent is required to deduct and withhold with respect to the making of such payment under any provision of federal, state, local or foreign tax law.

6. Concerning the Escrow Agent.

(a) Each Interested Party acknowledges and agrees that the Escrow Agent (i) shall not be responsible for any of the agreements (other than this Agreement) referred to or described herein (including without limitation the Purchase Agreement), or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent, (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification, and

(iv) may consult counsel satisfactory to it, including in-house counsel, and the written opinion or advice of outside counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the written opinion or advice of such outside counsel, except in the case of the Escrow Agent's gross negligence or willful misconduct.

(b) The Escrow Agent shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Escrow Agent's gross negligence or willful misconduct in breach of the terms of this Agreement. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.

(c) The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, to deal (on terms no less favorable than could be obtained on an arms length basis with a third party) with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account.

(d) Notwithstanding any term appearing in this Agreement to the contrary, in no instance shall the Escrow Agent be required or obligated to distribute any Escrow Property (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than one (1) business day after (i) it has received the applicable documents required under this Agreement in good form, or (ii) passage of the applicable time period (or both, as applicable under the terms of this Agreement), as the case may be.

(e) Unless and except to the extent otherwise expressly set forth herein, all deposits and payments hereunder, or pursuant to the terms hereof (including without limitation all payments to the Escrow Agent pursuant to Section 8), shall be in U.S. dollars.

(f) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so.

(g) The Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and shall not be required to take any action which, in Escrow Agent's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

(h) In the event that the Escrow Agent should at any time be confronted with inconsistent or conflicting claims or demands by the parties hereto, the Escrow Agent shall have the right to interplead said parties in any court of competent jurisdiction and request that such court determine such respective rights of the parties with respect to this Escrow Agreement, and upon doing so, the Escrow Agent shall be released from any obligations or liability to either



party as a consequence of any such claims or demands. If there shall be any disagreement between any of the parties to this Agreement, or between them or either of any of them and any other person, resulting in adverse claims or demands being made in connection with this Agreement or the Escrow Property, or in the event that the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it or refuse to take any other action hereunder, and in any such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until the Escrow Agent receives (i) joint written instructions signed by Purchaser and Seller, or (ii) a binding arbitration order or final non-appealable order of a court of competent jurisdiction (in either case, with the time for all appeals therefrom having expired with no appeal being taken directing delivery of the Escrow Property, in which event the Escrow Agent shall deliver the Escrow Property in accordance with such order or instructions).

(i) The Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder, either directly or by or through its agents or attorneys. Nothing in this Escrow Agreement shall be deemed to impose upon the Escrow Agent any duty to qualify to do business or to act as fiduciary or otherwise in any jurisdiction other than the State of Delaware. The Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Escrow Agreement or of any agreement amendatory or supplemental hereto.

(j) Unless specifically required by this Agreement or by law, the Escrow Agent shall not be required to give any bond or surety or report to any court despite any custom to the contrary and the Escrow Agent, if required to give any such bond or surety, shall have a lien against the Escrow Property in the amount thereof.

(k) In the event any amount of Escrow Property released to Purchaser or Seller pursuant to this Agreement is invalidated, declared to be fraudulent or preferential or must otherwise be restored or returned by the Escrow Agent in connection with the insolvency, bankruptcy or reorganization of any party or other person, whether by order of or settlement before any court or other authority or otherwise, such party shall contribute back to the Escrow Agent an amount such that each party will be affected by that invalidation, declaration, restoration or return ratably in proportion to the distributions it received under this Agreement, together with any related assignment, release or other instrument or document the Escrow Agent may request to restore the status quo ante.

#### 7. Compensation, Expense Reimbursement and Indemnification.

(a) The actual and reasonable outside counsel's fees and expenses the Escrow Agent incurs in connection with the preparation of this Agreement and the Escrow Agent's compensation for its normal services hereunder in accordance with the fee schedule attached hereto as Exhibit A and made a part hereof will be paid out of the Escrow Account. If the Escrow Account is insufficient to pay such fees, expenses and compensation, then the Interested Parties jointly and severally agree to pay or reimburse the Escrow Agent for such fees, expenses and compensation. In the event the Escrow Agent renders any extraordinary services in connection with the Escrow Account at the request of the Interested Parties, the Escrow Agent

shall be entitled to reasonable additional compensation therefore. The Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of Purchaser and Seller hereunder. The terms of this paragraph shall survive termination of this Agreement.

(b) The Interested Parties jointly and severally agree to reimburse the Escrow Agent on demand for all reasonable and customary costs and expenses incurred in connection with the administration of this Agreement or the escrow created hereby or the performance or observance of its duties hereunder which are in excess of its compensation for normal services hereunder, including without limitation, payment of any reasonable legal fees and reasonable expenses incurred by the Escrow Agent in connection with resolution of any claim by any party hereunder.

(c) The Interested Parties covenant and agree jointly and severally to indemnify the Escrow Agent (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to attorney's fees and other costs and expenses of outside counsel defending or preparing to defend against any claim of liability unless and except to the extent such loss, liability, damage, cost and expense shall be caused by the Escrow Agent's gross negligence, or willful misconduct. The Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of the parties hereunder. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.

(d) Without altering or limiting the joint and several liability of any of the Interested Parties to the Escrow Agent hereunder, each of the Interested Parties agrees as between themselves that amounts payable to the Escrow Agent pursuant to this Section 7 shall be borne solely by the party to whom the Deposit is paid pursuant to Section 2.1(b) of the Purchase Agreement; provided, however, that amounts payable to the Escrow Agent pursuant to Section 7(c) shall be shared equally by the Interested Parties

8. Tax Indemnification. Each of the Interested Parties agrees, severally and not jointly, (i) to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, and to instruct the Escrow Agent with respect to any certifications and governmental reporting that may be required under any laws or regulations that may be applicable in connection with its acting as Escrow Agent under this Agreement and (ii) except for any liability or obligation that results from the gross or willful negligence or willful misconduct of the Escrow Agent to indemnify and hold the Escrow Agent harmless from any liability or obligation on account of taxes, (other than income taxes of the Escrow Agent) assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Escrow Agent in connection with, on account of or relating to the Escrow Property, the management established hereby, any payment or distribution of or from the Escrow Property pursuant to the terms hereof or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses

(including reasonable legal fees and expenses of outside counsel), interest and penalties. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.

9. Resignation. The Escrow Agent may at any time resign as Escrow Agent hereunder by giving thirty (30) days prior written notice of resignation to the Interested Parties. Prior to the effective date of the resignation as specified in such notice, the Interested Parties will issue to the Escrow Agent written instructions authorizing redelivery of the Escrow Property to a bank or trust company that they select as successor to the Escrow Agent hereunder. If, however, the Interested Parties shall fail to name such a successor escrow agent within twenty (20) days after the notice of resignation from the Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction for appointment of a successor escrow agent.

10. Dispute Resolution. It is understood and agreed that, should any dispute arise with respect to the delivery, ownership, right of possession, and/or disposition of the Escrow Property, or should any claim be made upon the Escrow Agent or the Escrow Property by a third party, the Escrow Agent upon receipt of notice of such dispute or claim is authorized and shall retain in its possession without liability to anyone, all or any of said Escrow Property until such dispute shall have been settled either by the mutual written agreement of the parties involved, by a final order, decree or judgment of the Bankruptcy Court, the time for perfection of an appeal of such order, decree or judgment having expired. The Escrow Agent may, but shall be under no duty whatsoever to, institute or defend any legal proceedings which relate to the Escrow Property.

11. Consent to Jurisdiction and Service. Each of the Interested Parties hereby absolutely and irrevocably consents and submits to the jurisdiction of the Bankruptcy Court in connection with any actions or proceedings brought against the Interested Parties (or any of them) by the Escrow Agent arising out of or relating to this Agreement. In any such action or proceeding, the Interested Parties each hereby absolutely and irrevocably (i) waives any objection to jurisdiction or venue, (ii) waives personal service of any summons, complaint, declaration or other process, and (iii) agrees that the service thereof may be made by certified or registered first-class mail directed to such party, as the case may be, at their respective addresses in accordance with Section 15 hereof. Notwithstanding the preceding sentence, with respect to any actions or proceedings brought by one of the Interested Parties against the other Interested Party arising out of or relating to this Agreement (including the distribution of funds held in escrow in accordance with the Purchase Agreement), each of the Interested Parties agrees that such dispute shall be settled in the manner provided in the Purchase Agreement.

12. Waiver of Jury Trial. THE ESCROW AGENT AND THE INTERESTED PARTIES HEREBY WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE ESCROW AGENT AND THE INTERESTED PARTIES OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS OR ANY NEGOTIATIONS IN CONNECTION HEREWITH.

13. Force Majeure. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited

to (i) acts of God, riots, acts of war, epidemics, earthquakes or other natural disasters and (ii) to the extent a loss, liability, damage, cost and expense is not caused by the Escrow Agent's gross negligence or willful misconduct, fire, communication line failures, computer viruses, power failures, terrorist attacks, strikes and lockouts or any delay, error, omission or default of any mail, courier, facsimile or wireless agency or operator, (iii) the failure or neglect of the parties hereto or any of their agents; or (iv) the acts, regulations or edicts of any government or governmental agency or other group or entity exercising governmental powers.

14. Anti-Terrorism/Anti-Money Laundering Laws. To help the United States government fight the funding of terrorism or money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a new account. What this means for the parties to this Agreement: the Escrow Agent will ask for the name, address, date of formation, and other information that will allow the Escrow Agent to identify each of the Interested Parties (e.g., tax identification number.) The Escrow Agent may also ask to see other identifying documents (e.g., evidence of formation of corporation, limited liability company, limited partnership, etc., certificate of good standing. Each of the Interested Parties hereby agrees to provide the Escrow Agent, prior to the establishment of the Escrow Account, with the identification information identified above pertaining to it by completing the form attached as Exhibit B and returning it to the Escrow Agent

15. Notices; Wiring Instructions.

(a) Notice Addresses. Any notice permitted or required hereunder shall be in writing, and shall be sent (i) by personal delivery, overnight delivery by a recognized courier or delivery service, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) by confirmed telecopy accompanied by mailing of the original on the same day by first class mail, postage prepaid, in each case the parties at their address set forth below (or to such other address as any such party may hereafter designate by written notice to the other parties); provided, however, that no notice to the Escrow Agent shall be deemed duly given or made until actually received by the Escrow Agent.

If to Seller, addressed as follows:

Qimonda Richmond, LLC  
6000 Technology Boulevard  
Sandston, Virginia 23150  
Facsimile: (919) 474-6892  
Attention: Legal Department

With copies to (for information purposes only):

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
Facsimile: (212) 455-2502  
Attention: D. Rhett Brandon and Morris J. Massel

The Official Committee of Unsecured Creditors of Qimonda North America and  
Qimonda Richmond, LLC  
c/o Jones Day  
2727 North Harwood  
Dallas, Texas 75201  
Facsimile: (214) 969-5100  
Attention: Troy B. Lewis and Daniel P. Winikka

If to Purchaser, addressed as follows:

Texas Instruments Incorporated - Law Department  
7839 Churchill Way, M.S. 3999  
Dallas, Texas 75251-1900  
P.O. Box 655474, M.S. 3999  
Dallas, Texas 75265-5474  
Facsimile: (972) 917-4418  
Attention: Bart T. Thomas and Deborah Whalen

Texas Instruments Incorporated  
12500 TI Boulevard, M.S. 8658  
Dallas, Texas 75243  
P.O. Box 660199, M.S. 8658  
Dallas, Texas 75266-0199  
Facsimile: (214) 480-2900  
Attention: Joseph Hubach

with a copies to (for information purposes only):

Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, TX 75201-6659  
Facsimile: (214) 978-4306  
Attention: Joseph J. Wielebinski and Robert R. Kibby

If to Escrow Agent, addressed as follows:

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890  
Attention: David Young  
Facsimile: (302) 651-1079

with a copies to (for information purposes only):

Putney Twombly Hall & Hirson, LLP  
521 Fifth Avenue  
New York, New York, 10175  
Attention: William M. Pollak, Esq.  
Facsimile: (212) 682-9380

(b) Wiring Instructions. Any funds to be paid to or by the Escrow Agent hereunder shall be sent by wire transfer pursuant to the following instructions (or by such method of payment and pursuant to such instruction as may have been given in advance and in writing to or by the Escrow Agent, as the case may be, in accordance with Section 15(a) above):

If to Seller:

Bank: Citibank, N.A.  
ABA #: 021000089  
Acct. #: 30560041  
Name: Qimonda Richmond, LLC.

If to Purchaser:

Bank: Bank of America N.A.  
ABA #: 026009593  
Acct. #: 125-480-2152  
Name: Texas Instruments Incorporated

If to the Escrow Agent:

Wilmington Trust Company  
ABA 031100092  
Acct. # 094290-000  
Name: Qimonda Richmond/Texas Instruments Escrow  
Attn: David B. Young

16. Miscellaneous.

(a) Binding Effect; Successors. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors and assigns. If the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another entity authorized to exercise fiduciary powers, the successor entity without any further act shall be the successor Escrow Agent.

(b) Modifications. This Agreement may not be altered or modified without the express written consent of the parties hereto. No course of conduct shall constitute a waiver

of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion. Notwithstanding any other provision hereof, consent to an alteration or modification of this Agreement may not be signed by means of an e-mail address.

(c) Applicable Law and Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and to the extent not inconsistent with the Bankruptcy Code, the laws of the state of Delaware applicable to agreements made and to be performed wholly within such jurisdiction. Purchaser and Seller further agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this agreement. The parties agree that no court shall have the power to award consequential, indirect or punitive damages (including lost profits) unless the applicable court determines that this limitation, under the circumstances, violates public policy.

(d) Reproduction of Documents. This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, and (b) certificates and other information previously or hereafter furnished, may be reproduced by any photographic, photostatic, microfilm, optical disk, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

(e) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) Termination of Escrow. This Agreement shall terminate upon the release by the Escrow Agent of all amounts contained in the Escrow Account in accordance with this Agreement.

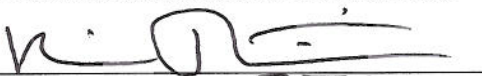
(g) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written or oral, between the parties hereto with respect to the subject matter hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered in its name and on its behalf as of the date first set forth above.

PURCHASER:

TEXAS INSTRUMENTS INCORPORATED

By:   
Name: KEVIN RITCHIE  
Title: Sr VP TMG

SELLER:

QIMONDA RICHMOND, LLC

By: \_\_\_\_\_  
Name:  
Title:

ESCROW AGENT:

WILMINGTON TRUST COMPANY

By: \_\_\_\_\_  
Name:  
Title:



IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered in its name and on its behalf as of the date first set forth above.

PURCHASER:

TEXAS INSTRUMENTS INCORPORATED

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

Name:

Title:

SELLER:

QIMONDA RICHMOND, LLC

By: Miriam Martinez

Name:

Title:

MIRIAM MARTINEZ  
PRESIDENT CEO

ESCROW AGENT:

WILMINGTON TRUST COMPANY

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

Name:

Title:

[SIGNATURE PAGE TO DEPOSIT ESCROW AGREEMENT]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered in its name and on its behalf as of the date first set forth above.

PURCHASER:

TEXAS INSTRUMENTS INCORPORATED

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

Name:

Title:

SELLER:

QIMONDA RICHMOND, LLC

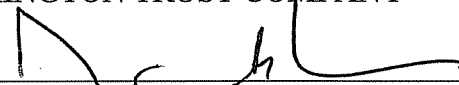
By: \_\_\_\_\_

Name:

Title:

ESCROW AGENT:

WILMINGTON TRUST COMPANY

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

Name:

Title:

David B. Young  
Assistant Vice President

**[SIGNATURE PAGE TO DEPOSIT ESCROW AGREEMENT]**

**EXHIBIT A**

**SCHEDULE OF FEES**

17. SCHEDULE OF FEES AND EXPENSES

<b>To act as</b>		
<b>Escrow Agent</b>		
<b>Initial Acceptance Fee (one time, payable in advance)</b>		<b>\$ 0.00</b>
<b><u>Annual Administration Fee</u> (payable annually in advance)</b>		<b>\$5,000/year</b>
Including complete study of drafts of Escrow Agreement and all supporting documents in connection therewith, conferences until final Agreement is agreed upon, execution of final Agreement and all administrative duties.		
<b><u>Transaction Fees (only if applicable):</u></b>		
<b>a. Purchase, sale, withdrawal, maturities, calls, and puts of domestic securities</b>		<b>\$15.00*</b>
<b>b. Physical delivery of domestic securities</b>		<b>\$50.00*</b>
<b>c. Purchase of Eurodollar certificate of deposit</b>		<b>\$65.00*</b>
<b>d. Principal amortizing securities (per pool/per month)</b>		<b>\$10.00*</b>
<b>e. Tax Reporting</b>		<b>At Cost</b>
<b>f. Wire Transfer Charges</b>	<b>Outgoing</b>	<b>\$25.00</b>
	<b>Incoming</b>	<b>\$10.00</b>

**\* Not applicable if investment is in WTC family of funds**

**NOTE:**

Charges for any services not specifically covered in this schedule will be billed commensurate with the services rendered. This schedule reflects charges that are now in effect for our normal and regular services and are subject to modification where unusual conditions or requirements prevail, **and does not include counsel fees** or expenses and disbursements, which will be billed at cost. **The fees of our counsel shall be due and payable whether or not the transaction closes.**

**AGREED TO & ACCEPTED** \_\_\_\_\_

DATE \_\_\_\_\_

**EXHIBIT B**

**Due Diligence Questionnaire for Entity Customers**

Dear Customer:

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism or money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a new account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Please complete the items identified and sign below. In certain circumstances, we may be required to request additional information. Thank you for your cooperation in this matter.

**Company Name:** \_\_\_\_\_  
\_\_\_\_\_

**SSN/TIN\*:** \_\_\_\_\_

**Street Address\*\*:** \_\_\_\_\_  
\_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_  
\_\_\_\_\_

**Phone (Optional):** \_\_\_\_\_ **Fax (Optional):** \_\_\_\_\_  
\_\_\_\_\_

**eMail (Optional):** \_\_\_\_\_

*\*If SSN/TIN has been applied for please attach copy of filed application*

*\*\*Business street address, the address for the principal place of business, local office or other physical location,*

*P.O. Box address is not acceptable*

**Required documents from non-individuals:**

Please provide the following *executed* document:

Completed IRS Form W-9/W-8 (form attached)

Please provide *at least one (1)* of the following certified documents:

Certificate or Articles of Incorporation

Government-issued business license

Partnership Agreement

LLC Agreement

Trust Agreement  
Certificate of Good Standing (issued within the last six months)

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

Agreement, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound by this Bill of Sale, hereby covenant, agree, promise, warrant, represent and declare as follows:

**AGREEMENT:**

1. Recitals. The background recitals are incorporated herein and made a part of this Bill of Sale by this reference.

2. Sale and Transfer of Assets. Effective as of the Closing Date, and pursuant to and in accordance with the Purchase Agreement and the Sale Order, Seller hereby sells, transfers, conveys and assigns to Buyer all of the Assets, free and clear of all Encumbrances pursuant to Section 363(b) and (f) of the Bankruptcy Code, and Buyer accepts such sale, transfer, conveyance and assignment of the Assets.

2. Further Actions. Seller hereby covenants that, from time to time after delivery of this Bill of Sale, at Buyer's request and expense, and without further consideration, Seller will execute and deliver such instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to more effectively sell, transfer, assign, deliver and vest in Buyer title to and possession of the Assets, and any and all other rights and interests pertaining thereto.

3. Governing Law. This Bill of Sale shall be governed by and construed and enforced in accordance with the laws of the State of Delaware and the Bankruptcy Code.

4. Counterparts; Facsimiles. This Bill of Sale may be executed in one or more counterparts, each of which shall constitute an original agreement but all of which together shall constitute one and the same instrument. The exchange of copies of this Bill of Sale and of signature pages by electronic mail or facsimile transmission shall constitute effective execution and delivery of this Bill of Sale as to the parties and may be used in lieu of the original Bill of Sale for all purposes.

5. Inurement. This Bill of Sale will inure to the benefit of Buyer, its successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, its estate, creditors, direct and indirect equity holders, all parties-in-interest, affiliates, successors, assigns, grantees, any affected third parties, administrators, receivers and trustees, including, without limitation, any trustee or successor trustee appointed or elected in the Bankruptcy Case.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Bill of Sale effective as of the Closing Date.

**SELLER:**

**QIMONDA RICHMOND, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**TEXAS INSTRUMENTS INCORPORATED,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**BILL OF SALE AND ASSIGNMENT AGREEMENT**

[See Attached]



## **EXHIBIT D**

### **BILL OF SALE AND ASSIGNMENT AGREEMENT**

THIS BILL OF SALE AND ASSIGNMENT AGREEMENT (this "Bill of Sale") is duly made, executed and delivered effective as of \_\_\_\_\_, 2009 (the "Closing Date"), by and between Qimonda Richmond, LLC, a Delaware limited liability company ("Seller"), and Texas Instruments Incorporated, a Delaware corporation ("Buyer"), pursuant and subject to all of the representations, warranties, terms, covenants and conditions of that certain Asset Purchase Agreement by and between Buyer and Seller, dated as of August 19, 2009 (the "Purchase Agreement"). All capitalized terms used but not defined herein shall have the same meanings assigned to them in the Purchase Agreement and in the Sale Order (hereafter defined).

### **RECITALS:**

WHEREAS, on February 20, 2009 (the "Petition Date"), Seller filed a voluntary petition for relief (the "Bankruptcy Case") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 09-10589 (MFW), jointly administered;

WHEREAS, Seller continues to operate as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Buyer and Seller entered into the Purchase Agreement, pursuant to which Buyer agreed to purchase from Seller, and Seller agreed to sell to Buyer, the Assets;

WHEREAS, the Purchase Agreement and the purchase and sale of the Assets were approved and authorized by the Bankruptcy Court pursuant to an order entered in the Bankruptcy Case on \_\_\_\_\_, 2009 (the "Sale Order");

WHEREAS, all conditions to the Closing were duly satisfied or waived pursuant to the Purchase Agreement, and the sale was consummated, transacted and closed as of the Closing Date set forth above;

WHEREAS, the Purchase Agreement provides that the parties will deliver to each other at Closing executed counterparts of an original bill of sale evidencing the sale, transfer and conveyance of the Assets to Buyer, and this Bill of Sale is the bill of sale provided for in the Purchase Agreement; and

WHEREAS, Seller, in consideration of the Purchase Price paid to Seller under the Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, has sold, transferred, conveyed and assigned and by these presents does sell, transfer, convey and assign unto Buyer, its successors and assigns, all of Seller's rights, title and interests in and to the Assets.

NOW, THEREFORE, pursuant to the foregoing recitals, and in consideration of the representations, warranties, terms, covenants and conditions contained in the Purchase Agreement and the payment by Buyer to Seller of the Purchase Price set forth in the Purchase

Agreement, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound by this Bill of Sale, hereby covenant, agree, promise, warrant, represent and declare as follows:

**AGREEMENT:**

1. Recitals. The background recitals are incorporated herein and made a part of this Bill of Sale by this reference.

2. Sale and Transfer of Assets. Effective as of the Closing Date, and pursuant to and in accordance with the Purchase Agreement and the Sale Order, Seller hereby sells, transfers, conveys and assigns to Buyer all of the Assets, free and clear of all Encumbrances pursuant to Section 363(b) and (f) of the Bankruptcy Code, and Buyer accepts such sale, transfer, conveyance and assignment of the Assets.

2. Further Actions. Seller hereby covenants that, from time to time after delivery of this Bill of Sale, at Buyer's request and expense, and without further consideration, Seller will execute and deliver such instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to more effectively sell, transfer, assign, deliver and vest in Buyer title to and possession of the Assets, and any and all other rights and interests pertaining thereto.

3. Governing Law. This Bill of Sale shall be governed by and construed and enforced in accordance with the laws of the State of Delaware and the Bankruptcy Code.

4. Counterparts; Facsimiles. This Bill of Sale may be executed in one or more counterparts, each of which shall constitute an original agreement but all of which together shall constitute one and the same instrument. The exchange of copies of this Bill of Sale and of signature pages by electronic mail or facsimile transmission shall constitute effective execution and delivery of this Bill of Sale as to the parties and may be used in lieu of the original Bill of Sale for all purposes.

5. Inurement. This Bill of Sale will inure to the benefit of Buyer, its successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, its estate, creditors, direct and indirect equity holders, all parties-in-interest, affiliates, successors, assigns, grantees, any affected third parties, administrators, receivers and trustees, including, without limitation, any trustee or successor trustee appointed or elected in the Bankruptcy Case.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Bill of Sale effective as of the Closing Date.

**SELLER:**

**QIMONDA RICHMOND, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**TEXAS INSTRUMENTS INCORPORATED,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT E**

**THE BIDDING PROCEDURES**

[See Attached]

## EXHIBIT E

### **THE BIDDING PROCEDURES**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the proposed sale (the "Proposed Sale") of certain assets of Qimonda Richmond LLC (the "Debtor"). The Debtor will seek entry of an order from the Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") authorizing and approving the Proposed Sale to the Buyer (defined below) or to another Qualified Bidder (defined below) that is determined to have made the highest, best or otherwise financially superior offer (the "Sale Transaction"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order and the Purchase Agreement (each as defined below, as applicable).

#### Asset Purchase Agreement

On August 19, 2009, the Debtor entered into an asset purchase agreement (the "Purchase Agreement") with Texas Instruments Incorporated (the "Buyer"). Pursuant to the Purchase Agreement, the Buyer proposes to acquire the Assets (as defined in the Purchase Agreement) free and clear of Encumbrances (as defined in the Purchase Agreement).

Recognizing the Buyer's expenditure of significant time, energy, and resources, the Debtor has agreed to provide certain bidding protections to the Buyer. Specifically, the Debtor has determined that the Purchase Agreement furthers the goals of the Bidding Procedures by setting a floor by which all other Qualified Bids (defined below) must exceed. As a result, in accordance with Section 6.7 of the Purchase Agreement, the Debtor has agreed that if the Buyer is not the Successful Bidder (defined below), the Debtor will, in certain circumstances, reimburse the Buyer for certain of its expenses of up to \$750,000 (the "Expense Reimbursement") and pay to the Buyer a breakup fee equal to Four Million Three Hundred Twelve Thousand Five Hundred Dollars (\$4,312,500) (the "Breakup Fee"). The Buyer will have an opportunity to "credit bid" such Breakup Fee in any subsequent bids it elects to make in the Auction (defined below).

The Buyer is a Qualified Bidder (defined below), and the Purchase Agreement is a Qualified Bid (defined below). The Buyer's offer to purchase the Assets as set forth in the Purchase Agreement may be terminated by the Buyer pursuant to the terms and conditions set forth in Section 8.1 of the Purchase Agreement.

#### The Bidding Process

On July 21, 2009, the Bankruptcy Court entered an Order Granting Debtors' Motion, Pursuant to Sections 105(a), 105(d) and 363(b) of the Bankruptcy Code, for Entry of an Order Approving Bidding Protection Procedures and Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors (Docket No. 511) (the "Bidding Procedures Order").

Subject to the Bidding Procedures Order, the Debtor and its advisors shall (i) determine whether any bid for the Assets is a Qualified Bid, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate in good faith any offers made to purchase the Assets

(collectively, the “Bidding Process”). The Debtor shall consult with certain restricted members of the Official Committee of Unsecured Creditors (the “Committee”) and its professionals and comply with the GECC Consultation Right (as defined below), regarding the Debtor’s determination as to whether bids are Qualified Bids and bidders are Qualified Bidders. Only Qualified Bidders may participate in the Bidding Process and bid at the Auction. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not a Qualified Bidder, and the Debtor and its professionals shall use good faith efforts to provide all Qualified Bidders with substantially similar information. The Debtors, after consultation with the Committee’s professionals, shall have the right to adopt such other rules for the Bidding Process (so long as such rules are not materially inconsistent with those set forth herein and in the Purchase Agreement) that promote the goals of the Bidding Process.

### **Participation Requirements**

Any person that wishes to participate in the Bidding Process (a “Potential Bidder”) must become a “Qualified Bidder”. As a prerequisite to becoming a Qualified Bidder (and thus, among other things, prior to being able to conduct due diligence), a Potential Bidder must deliver (unless previously delivered) to the Debtor, on or before September 21, 2009 at 4:00 p.m. (prevailing New York City time) :

- (i) An executed confidentiality agreement in form and substance acceptable to the Debtor; and
- (ii) Sufficient information, as requested by the Debtor, to allow the Debtor to determine that the Potential Bidder has the financial wherewithal and any required authorizations to close the Sale Transaction, including, but not limited to, current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtor) of the Potential Bidder or of those entities that will guarantee the obligations of the Potential Bidder.

A Qualified Bidder is a Potential Bidder that (a) delivers the documents described in subparagraphs (i) - (ii) above, (b) individually offers, or offers in combination with other bidders (subject to the restrictions contained herein), to purchase all of the Assets (as defined in the Purchase Agreement) and not some subset or portion of the Assets, and (c) that the Debtor determines is reasonably likely (based on financial information submitted by the Potential Bidder, the availability and amount of financing, experience and other considerations deemed relevant by the Debtor) to submit a bona fide offer and to be able to consummate a sale of the Assets if selected as a Successful Bidder.

Notwithstanding anything herein to the contrary, (i) General Electric Capital Corporation (“GECC”) shall be deemed a Qualified Bidder, (ii) if GECC submits all Required Bid Documents in accordance with the terms of the Bid Procedures, such a bid submitted by GECC shall be deemed a Qualified Bid, and (iii) GECC shall have the right to submit a credit bid pursuant to section 363(k) of the Bankruptcy Code for GECC Equipment (as defined in the Bidding Procedures Order).

The Debtor shall consult with the Committee's professionals and restricted members and comply with the GECC Consultation Right in connection with the Debtor's determinations as to whether a Potential Bidder is a Qualified Bidder. No later than seven (7) business days after a Potential Bidder delivers all of the materials required by subparagraphs (i) - (ii) above, the Debtor shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder.

### **Due Diligence**

The Debtor may afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (defined below). The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. Neither the Debtor nor any of its respective representatives are obligated to furnish any information to any person other than a Qualified Bidder.

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid to (i) Qimonda North America Corp., 4721 Emperor Boulevard, Suite 110, Durham, N.C. 27703 (Attn: Miriam Martinez and Scott Ryan); (ii) Advanced Technology Resource Group of CMN Inc. d/b/a Collier International, 601 Union Street, Suite 5300, Seattle, Washington 98101 (Attn: Nick Papa); and (iii) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (Attn: Morris J. Massel and D. Rhett Brandon), not later than 4:00 p.m. (prevailing New York City time) on September 21, 2009 (the "Bid Deadline")

### **Bid Requirements**

All initial bids must include the following documents (the "Required Bid Documents"):

- The identity of the bidder and the officer(s) or authorized agent(s) who will appear on behalf of such bidder;
- A purchase price, the value of which is determined by the Debtor (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) to be at least equal to or greater than the purchase price in the Purchase Agreement for the applicable Assets bid on plus \$5,500,000 (the "Initial Incremental Bid Amount");
- A letter stating that the bidder's offer is irrevocable until October 31, 2009 (as may be extended by written agreement of the parties) (the "Termination Date"); provided that the Termination Date will be automatically extended to November 30, 2009 if such bidder is the Successful Bidder after the conclusion of the Auction;

- An executed copy of a purchase agreement pursuant to which the Qualified Bidder proposes to acquire the Assets, which purchase agreement shall include the Termination Date; provided that the Termination Date will be automatically extended to November 30, 2009 if such bidder is the Successful Bidder after the conclusion of the Auction;
- A good-faith, cash deposit, which shall be made with the Debtor's escrow agent upon the submission of a Qualified Bid in an amount equal to at least 10% of the purchase price set forth in the applicable purchase agreement for such Qualified Bidder (the "Good Faith Deposit"); provided that for a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, the Good Faith Deposit shall only be a reduction of GECC's allowed secured claim by an amount equal to 10% of the purchase price set forth in GECC's purchase agreement, which shall be the sole and exclusive remedy in law, equity or otherwise for any and all breaches by GECC of the executed purchase agreement pursuant to which GECC proposes to acquire the applicable Assets in accordance with these Bidding Procedures;
- Written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor, with appropriate contact information for such financing sources, provided that for any bid that is entirely financed as a credit bid pursuant to section 363(k) of the Bankruptcy Code, no such evidence shall be required;
- A redline of bidder's proposed purchase agreement over that of the Purchase Agreement; and
- A redline of bidder's proposed form of sale order over the form of such order attached to the Purchase Agreement.

A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid". Promptly upon receipt of the Required Bid Documents by the Debtor from any Qualified Bidder, the Debtor shall provide a copy of such Required Bid Documents to the Buyer.

The Debtor reserves the right to determine, after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right, the value of any Qualified Bid(s) for the Assets, and which Qualified Bid(s) constitutes the highest, best or otherwise financially superior offer to purchase the Assets. Proposals will be evaluated on numerous grounds; however, proposals that are unconditional and contemplate sales of the Assets that may be consummated on or soon after the Sale Hearing are preferred.

**"As Is, Where Is"**

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, its agents or its estate except to the extent set forth in the Purchase Agreement or the purchase agreement of



another Successful Bidder. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidding Procedures Order or these Bidding Procedures or, (i) as to the Buyer, as expressly set forth in the Purchase Agreement and ancillary documents, or (ii) as to another Successful Bidder, as expressly set forth in the applicable purchase agreement and ancillary documents.

### **Free Of Any And All Encumbrances**

Except as otherwise provided in the Purchase Agreement or another Successful Bidder's purchase agreement, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of Encumbrances, with such Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Encumbrances applied against the Assets. Nothing herein shall prevent any party in interest from objecting to the Bankruptcy Court's approval of such purchase agreement.

### **Auction**

If a Qualified Bid other than that submitted by the Buyer has been received by the Debtor, the Debtor shall conduct an auction (the "Auction") with respect to the Assets. The Auction shall commence on September 23, 2009 at 10:00 a.m. (prevailing New York City time). The Debtor shall notify all Qualified Bidders that have submitted Qualified Bids of the time and place of the Auction.

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the highest Qualified Bid(s) as determined by the Debtor (after consultation with the Committee's professionals and restricted members) and subsequently continue in minimum increments of at least \$1,000,000.

At the conclusion of the Auction, the Debtor (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) shall identify the highest, best or otherwise financially superior offer for the Assets (the "Successful Bid(s)"), and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best or otherwise financially superior offer will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination. The Qualified Bidder whose final bid is deemed to be highest and best following the conclusion of the Auction will be the "Successful Bidder", and such bid, the "Successful Bid". Immediately after the announcement of the Successful Bid, the Successful Bidder shall execute and deliver a purchase agreement incorporating the price and terms offered in the Successful Bid (the "Final Sale Agreement"). Upon submission of the Final Sale Agreement by the Successful Bidder, the

Debtor will execute the Final Sale Agreement and shall seek Bankruptcy Court approval of the Final Sale Agreement at a hearing before the Bankruptcy Court.

### **Acceptance of Qualified Bids**

The Debtor shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after a hearing (the "Sale Hearing") and any and all liens on the Assets shall attach to the proceeds of the sale with the same validity and priority as such liens applied against the Assets. The Debtor's presentation of the Successful Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the bid. The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. All interested parties reserve their right to object to the Debtor's selection of the Successful Bidder.

### **Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on September 24, 2009 at 10:30 a.m. (prevailing New York City time). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within ten (10) business days after entry of an Order approving the Sale, the Debtor shall be authorized (after consultation with the Committee's professionals and compliance with the GECC Consultation Right), but not required, to deem the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtor (after consultation with the Committee's professionals and compliance with the GECC Consultation Right) shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

### **No Combination Bidding**

Qualified Bidders may not form joint ventures or partnerships to submit bids with respect to the Sale Transaction, without the prior written consent of the Debtor. Without limiting the generality of the foregoing, separate bidders on any Sale Transaction may not combine their bids without the prior written approval of the Debtor.

### **Return of Good Faith Deposit**

As noted above, all Qualified Bidders will be required to submit the Good Faith Deposit with the Debtor's escrow agent upon the submission of a Qualified Bid in the amount set forth in (i) the Purchase Agreement with respect to the Buyer and (ii) the applicable purchase agreement with respect to another Qualified Bidder. The Buyer's Deposit (as defined in the Purchase Agreement) shall be held in an interest-bearing account as specified in the Deposit Escrow Agreement (as defined in the Purchase Agreement) and will be returned to Buyer pursuant to the terms and conditions set forth in Section 2.1(b) of the Purchase Agreement. Good Faith Deposits of all other Qualified Bidders shall be held in an interest-bearing account until a proposal is no longer irrevocable as provided herein, at which time they will be returned to the Qualified Bidder (or in the case of a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, no reduction of GECC's allowed secured claim); provided, however, that if a Successful Bidder fails to consummate an approved sale solely because of a breach or failure to

perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or in the case of a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, GECC's allowed secured claim shall be reduced by an amount equal to 10% of the purchase price set forth in GECC's purchase agreement), and such Good Faith Deposit shall irrevocably become the property of the Debtor.

### **The Committee and GECC**

The Debtor shall provide to the Committee's professionals information, which information may be shared with restricted members of the Committee, regarding the qualification of bidders and such other information related to the sale of the Assets as may be reasonably requested by the Committee. Throughout the process, the Debtor shall consult with the Committee's restricted members and its professionals as provided herein.

The term "GECC Consultation Right" shall mean, if any GECC Equipment is proposed to be sold, that the Debtor (i) shall provide to GECC information regarding the qualification of bidders and such other information related to the sale of the Assets as may be reasonably requested by GECC and (ii) shall consult with GECC throughout the process as provided herein; provided, however, the Debtor shall not be required to consult with GECC if (y) GECC submits a Qualified Bid, or (z) GECC asserts that it has submitted a Qualified Bid, until such time as GECC's assertions are overruled by the Bankruptcy Court.

### **Bankruptcy Court Oversight**

The Bankruptcy Court shall decide any controversy regarding the qualification of bidders and the valuation of bids.

### **Reservation of Rights**

The Debtor reserves the right to (i) determine in its reasonable discretion (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) which offer for the Assets is the highest or otherwise best offer and (ii) reject at any time prior to entry of a Bankruptcy Court order approving an offer for the Assets, without liability, any offer that the Debtor in its reasonable discretion (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) deems to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or procedures set forth therein or herein, or (z) contrary to the best interests of the Debtor and its estate.

The selection of a Successful Bidder shall be within the reasonable business judgment of the Debtor (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) and subject to the approval of the Bankruptcy Court, and economic considerations may not be the sole criteria upon which the Debtor may base its decision. In assessing whether a proposal constitutes a higher or otherwise better offer, the Debtor may consider, among other things, the net economic effect upon the Debtor's estate. The presentation of a particular proposal to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the proposal. The Debtor will be deemed to have accepted a proposal only when the proposal has been approved by the Bankruptcy Court at the

Sale Hearing At or before the Sale Hearing, the Debtor (after consultation with the Committee's professionals and compliance with the GECC Consultation Right) may impose such other terms and conditions on the Qualified Bidders as the Debtor may determine to be in the best interest of the Debtor, its estate, its creditors, and other parties in interest.

**EXHIBIT F**

**SALE ORDER**

[See Attached]

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X	
	)	
In re:	)	Chapter 11
	)	
QIMONDA RICHMOND, LLC <u>et. al.</u>	)	Case No. 09-10589 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
-----	X	

**ORDER (I) AUTHORIZING THE SALE BY QIMONDA RICHMOND, LLC TO TEXAS INSTRUMENTS INCORPORATED OF CERTAIN ASSETS FREE AND CLEAR OF ENCUMBRANCES, (II) APPROVING ASSET PURCHASE AGREEMENT, AND (III) AUTHORIZING THE DEBTOR TO PURCHASE CERTAIN ADDITIONAL ASSETS**

Upon the motion, dated August [31], 2009 (the "Motion"), of Qimonda Richmond LLC, as debtor and debtor-in-possession (the "Seller" or "Debtor") in the above captioned bankruptcy case (the "Bankruptcy Case"), for the entry of an order (i) authorizing the Debtor's sale (the "Sale") to Texas Instruments Incorporated ("Purchaser"), pursuant to an Asset Purchase Agreement between the Debtor and Purchaser, dated as of August 20, 2009 (as may be amended, the "Purchase Agreement"), a copy of which is annexed hereto as Exhibit A, of the Assets,<sup>1</sup> free and clear of Encumbrances, with such Encumbrances to transfer, affix, and attach to the proceeds of the Sale, with the same order, priority, validity, force, and effect which such Encumbrances now have against the Assets, subject to any claims and defenses the Debtor or its estate may possess with respect thereto, (ii) approving the Purchase Agreement and the transactions set forth therein, and (iii) authorizing the Debtor to purchase certain assets from (A) the RBS Asset Finance, Inc. ("RBS"), pursuant to the Asset Purchase Agreement between the Debtor and RBS, dated as of August 20, 2009 (the "RBS Purchase Agreement"), and (B) Overland Capital Group, Inc. ("Overland"), pursuant to the Asset Purchase Agreement between the Debtor and Overland,

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

dated as of August 20, 2009 (the “Overland Purchase Agreement” and together with the RBS Purchase Agreement, the “Related Purchase Agreements”), all as more fully described in the Motion, the Purchase Agreement, and the Related Purchase Agreements; and upon this Court’s order dated July 21, 2009, approving, *inter alia*, certain bidding procedures and an auction (the “Auction”) in connection with the Sale (the “Bid Procedures Order”); and upon this Court’s *Order (I) Authorizing Qimonda Richmond, LLC to Award Bidding Protections to Texas Instruments Incorporated and (II) Affording the Payment of the Bidding Protections Administrative Expense Treatment under Sections 503 and 507 of the Bankruptcy Code* [Docket No. \_\_\_\_]; and Purchaser having presented the highest and best bid for the Assets; and upon the record of the hearing to consider approval of the proposed Sale (the “Sale Hearing”); and the Court having determined that the relief requested by the Motion is proper, lawful, necessary, appropriate and in the best interests of the Debtor, its estate, creditors and direct and indirect equity holders, and all parties-in-interest; and upon the Declaration of \_\_\_\_ (the “\_\_\_\_\_ Declaration”) and the Declaration of [TI Employee] (the “\_\_\_\_\_ Declaration”); and any responses and objections to the Motion or reservations of rights having been withdrawn, resolved, or overruled by this Order; and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

THE COURT FINDS AND DETERMINES THAT:<sup>2</sup>

General Findings and Notice

A. On February 20, 2009 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”), thereby initiating the Bankruptcy Case and creating its bankruptcy estate (the “Estate”).

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate pursuant to Bankruptcy Rule 7052, as made applicable by Bankruptcy Rule 9014

B. The Debtor is a limited liability company duly organized, and in good standing, under the laws of the State of Delaware.

C. No trustee has been appointed in the Bankruptcy Case, and the Debtor continues to manage the Estate as a debtor-in-possession.

D. As evidenced by the certificate(s) of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing: (i) service of the Motion was proper, adequate and sufficient under the applicable Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, (ii) proper, timely, adequate and sufficient notice of the Motion, the Auction and the Sale Hearing has been provided and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded by written and publication notice to all interested persons and entities, including: (1) the Office of the United States Trustee; (2) the Purchaser; (3) the official committee of unsecured creditors appointed in the Bankruptcy Case; (4) counsel to the agent for the postpetition lender; (5) all entities known to have asserted any Encumbrances in, upon or against the Assets; (6) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion or with jurisdiction over the Debtor's business and Assets or any part thereof; (7) other potentially interested purchasers; (8) counsel to Qimonda AG, (9) Qimonda Holding BV; and (10) all parties listed on the Debtors' creditor matrix; (iii) such notice was good, sufficient and appropriate under the particular circumstances, and (iv) no other or further notice of the Motion or the Sale Hearing is required.

E. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

Corporate Power, Authority and Ownership of the Assets



F. Subject to entry of this Order, (i) the Debtor has the full authority, ability, standing and right, under the Bankruptcy Code and applicable nonbankruptcy law, to enter into and perform under and consummate the Purchase Agreement, the Related Purchase Agreements and all other documents contemplated thereby, and to sell, assign, transfer, convey and deliver the Assets (after closing the Related Purchase Agreements) to the Purchaser pursuant to the Purchase Agreement and this Order, (ii) the Sale of the Assets by the Debtor pursuant to the Purchase Agreement has been validly and duly authorized by all necessary corporate action of the Debtor, (iii) the purchase of the assets in the Related Purchase Agreements by the Debtor has been validly and duly authorized by all necessary corporate action of the Debtor, (iv) the Debtor has all of the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement and the Related Purchase Agreements, and (v) the Debtor has taken all action necessary to authorize and approve the Purchase Agreement the Related Purchase Agreements and the consummation by the Debtor of the transactions contemplated thereby.

G. The Debtor is the sole and lawful owner of, and holds good and marketable title to, the Assets (other than the Assets to be purchased by the Debtor in the Related Purchase Agreements, which will be acquired by the Debtor at the closing of the Related Purchase Agreements and at which time, the Debtor will be the sole and lawful owner of, and hold good and marketable title to, such Assets). The transfer of the Assets to the Purchaser pursuant to this Sale Order will be a legal, valid, and effective transfer of the Assets, and will vest the Purchaser, to the exclusion of all other parties, with all right, title, and interest of the Debtor in and to the Assets free and clear of all Encumbrances.

The Sale Process

H. As evidenced by the record of the Bankruptcy Case and at the Sale Hearing, and on the papers filed in connection therewith, (i) the Debtor has marketed the Assets and conducted

the sale process in compliance with applicable law and orders of this Court, (ii) the Auction was duly noticed and conducted in a non-collusive, fair and reasonable manner, and (iii) a reasonable opportunity was provided to any interested party to make a higher or better offer for the Assets.

I. The Purchase Agreement resulted from the Debtor's marketing of the Assets, undertaken in full compliance with the Stalking Horse Order and applicable law. The highest and best offer that resulted from these activities was the offer from Purchaser, as embodied in the Purchase Agreement, pursuant to which Purchaser will pay the Debtor the Purchase Price for the Assets, subject to all rights, remedies, obligations and other provisions in the Purchase Agreement, including, without limitation, the Adjustment Mechanism (as defined in the Purchase Agreement).

J. Based on the facts and circumstances of the Debtor, additional marketing activities are unlikely to lead to any higher or better offer and would be costly and burdensome, and result in additional delays and costs. Any benefit to be gained by additional marketing of the Assets is likely to be outweighed by the costs and burdens associated therewith.

*The Purchase Agreement*

K. Purchaser's offer, as set forth in the Purchase Agreement, provides for the sale and transfer of the Assets to Purchaser. Such offer is the highest and best offer received for the assignment, transfer, conveyance, delivery and Sale of the Assets. Purchaser complied in all respects with the Stalking Horse Order and any other applicable order of this Court in negotiating and entering into the Purchase Agreement and the Sale, and the Purchase Agreement likewise complies with the Stalking Horse Order and any other applicable order of this Court.

L. The Purchase Price to be paid by Purchaser under the Purchase Agreement is fair value, and constitutes reasonably equivalent and reasonable market value and fair consideration for the Assets under the circumstances.

M. Purchaser is a bona fide third party purchaser for value of the Assets and is not an insider (as defined in the Bankruptcy Code) of the Debtor or Qimonda North America Corp. ("QNA" and together with the Debtor, the "Debtors") As set forth in the [II] Declaration, Purchaser seeks to consummate the purchase of the Assets in good faith and for no improper motive, reason or purpose.

N. The Purchase Agreement was negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions, and without collusion. Therefore, Purchaser, as a good faith purchaser, is entitled to the full protections of section 363(m) of the Bankruptcy Code with respect to the Assets and the transactions contemplated by the Purchase Agreement. Neither the Debtor nor Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the transfer of the Assets to be void or voidable under section 363(n) of the Bankruptcy Code.

O. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, the Estate, and its creditors and direct and indirect equity holders, if the Sale of the Assets to the Purchaser was not free and clear of all Encumbrances of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of such Encumbrances, including, without limitation, the Excluded Liabilities (as defined in the Purchase Agreement).

P. Sound business reasons exist for the Sale of the Assets pursuant to the Purchase Agreement. Entry into the Purchase Agreement and consummation of the transactions contemplated thereby constitute the exercise by the Debtor of sound business judgment and such acts are in the best interests of the Debtor, the Estate, its creditors and direct and indirect equity holders, and all parties-in-interest. The Court finds that the Debtor has articulated reasonable and compelling circumstances and good and sufficient business reasons justifying the Sale of the

Assets pursuant to the Purchase Agreement in accordance with sections 105 and 363 of the Bankruptcy Code. Such business reasons include, but are not limited to, the fact that: (i) there is substantial risk of deterioration of the value of the Assets if the transactions contemplated in the Purchase Agreement and the Related Purchase Agreements are not consummated quickly; (ii) the Sale of the Assets pursuant to the Purchase Agreement will reduce or minimize continuing, significant costs and expenses being incurred by the Debtor by having to, among other things, maintain, insure and provide security for the Assets; (iii) the Purchase Agreement constitutes the highest and best offer for the Assets; and (iv) the consummation of the Purchase Agreement will present the best opportunity to realize the value of the Assets and avoid decline and devaluation of the Assets. In addition, the Sale of the Assets pursuant to the Purchase Agreement and the purchase of the assets pursuant to the Related Purchase Agreements will (i) enable the Debtor to take advantage of a favorable offer in a market that may decline; (ii) prevent the continuing accrual of postpetition costs and expenses and obligations on account of the Assets; (iii) prevent the possible accrual of interest (including potentially default interest) to secured creditors; and (iv) enable the Debtor to sell the Assets for fair market value.

Q. The value of the Assets is maximized by (i) a Sale in one lot, as opposed to piecemeal sales, and (ii) the purchase of the assets by the Debtor in the Related Purchase Agreements.

R. The consideration provided by the Purchaser for the Assets is the highest and otherwise best offer received by the Debtor and is fair and reasonable. A sale of the Assets other than one free and clear of Encumbrances would impact materially and adversely on the Estate, and would yield substantially less value for the Estate, with less certainty than provided by the Sale of the Assets to the Purchaser. Consequently, a sale of the Assets other than one free and clear of Encumbrances would be of substantially less benefit to the Estate. In reaching this

determination, the Court has taken into account both the consideration to be realized directly by the Debtor and the indirect benefits of such sale. Therefore, the Sale of the Assets contemplated by the Purchase Agreement is in the best interests of the Debtor, the Estate, its creditors and direct and indirect equity holders, and all parties-in-interest.

S. Time is of the essence to closing the Sale and the Purchase Agreement contains strict time deadlines for the consummation of the transaction contemplated therein.

*Sale of the Assets Free and Clear of Encumbrances*

I. The Debtor may sell the Assets free and clear of all Encumbrances of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or to the Motion, are deemed to have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code.

U. All other holders of Encumbrances fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale of the Assets ultimately attributable to the property against or in which they assert such Encumbrance with the same order, priority, validity, force, and effect which they now have against the Assets, subject to any claims and defenses the Debtor or its Estate may possess with respect thereto.

V. Approval of the Purchase Agreement and the Related Purchase Agreements and consummation of the Sale of the Assets in the Purchase Agreement and the purchase of assets in the Related Asset Agreements at this time are in the best interests of the Debtor, the Estate, its creditors and direct and indirect equity holders, and all parties-in-interest.

W. Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the

transaction contemplated by the Purchase Agreement based upon any arrangement made by or on behalf of the Seller, provided that nothing herein shall relieve the Seller of its obligations to make payments, pursuant to applicable orders of this Court, to professionals retained in these cases.

NOW, THEREFORE, AFTER DUE DELIBERATION, THE COURT ORDERS, ADJUDGES, AND DECREES THAT

General Provisions and Authority

1. The Motion is granted in all respects. All responses or objections to the Motion or reservations of rights to the relief requested therein that have not been withdrawn, waived or settled are overruled on the merits and denied in their entirety.

2. The Purchase Agreement and all of the transactions contemplated thereby are approved and shall be binding on the Debtor, the Estate and all creditors, direct and indirect equity holders and parties in interest in the Bankruptcy Case.

3. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized to enter into, perform under, comply with, implement and to take all other action as is necessary to consummate the terms of the Purchase Agreement and the Related Purchase Agreements including, but not limited to, executing and delivering all additional agreements, instruments, and documents required under the Purchase Agreement and the Related Purchase Agreements and such other agreements that are necessary or appropriate to consummate the transactions contemplated by the Purchase Agreement or the Related Purchase Agreements, all without the need for further motion or Court order.

4. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon Closing, good and marketable title in and to the Assets shall be transferred to the Purchaser free

and clear of all Encumbrances of any kind or nature whatsoever, including, but not limited to, (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or the Purchaser's interest in the Assets, or any similar rights, (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to ownership or operation of the Assets prior to the Closing, and (iii) (a) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership, (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, and (c) claims (as defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests, and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the Petition Date, including, without limitation, any product liability, guarantee, assurance, or warranty (whether expressed or implied) or that arise out by operation of law, and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to all claims arising under doctrines of successor liability, with all such Encumbrances of any kind or nature whatsoever to attach to the net proceeds of the Sale of the Assets with the same order, priority, validity, force, and effect which they now have against the Assets, subject to any claims and defenses the Debtor or its Estate may possess with respect thereto.

5. The transfer of the Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Assets, shall vest the Purchaser with the Debtor's right, title, and interest in and to the Assets as the sole and exclusive owner thereof free

and clear of all Encumbrances of any kind or nature whatsoever, and shall vest the Purchaser with good and marketable title in and to the Assets.

6. The consideration provided by the Purchaser for the Assets under the Purchase Agreement shall be deemed to constitute reasonably equivalent and reasonable market value and fair consideration for the Assets under the Bankruptcy Code and shall not be subject to challenge under any applicable nonbankruptcy law.

7. Each and every federal, state, and local governmental agency, department or authority is directed to accept, file and record any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

Good Faith Protections

8. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale of the Assets pursuant to the Purchase Agreement shall not affect the validity of the Sale of the Assets to the Purchaser, unless such consummation is stayed pending appeal. The Purchaser is a good faith purchaser of the Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

9. The consideration provided by the Purchaser for the Assets under the Purchase Agreement is the product of non-collusive, arm's length negotiations, and is fair and reasonable and may not be avoided under the provisions of section 363(n) of the Bankruptcy Code.

Sale of the Assets Free and Clear of Encumbrances

10. Those parties asserting Encumbrances against, in or to the Assets who did not respond or object to the Sale of the Assets, or who have withdrawn their responses or objections, are deemed to have consented to the Purchase Agreement and the transactions contemplated



thereby and authorized herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those parties asserting Encumbrances against, in or to the Assets who did respond or object and have not withdrawn such responses or objections fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

11. Any holder or potential holder of an Encumbrance against, in or to the Assets is provided adequate protection, within the meaning of section 363(e) of the Bankruptcy Code, by the terms of this Order, including, but not limited to, the provisions herein that provide for Encumbrances, if any, to attach to the proceeds of the Assets ultimately attributable to the property against or in which they assert such Encumbrances.

12. Except as expressly permitted or otherwise specifically provided by the Purchase Agreement or this Sale Order, all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax, and regulatory authorities, lenders, employees, trade, and other creditors, including, but not limited to Qimonda AG and Qimonda Holding BV that may hold an Encumbrance of any kind or nature whatsoever against, in or to the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Assets prior to the Closing, or the transfer of the Assets to the Purchaser under the terms of the Purchase Agreement, are forever barred, estopped, and permanently enjoined from asserting any Encumbrance against the Purchaser, its successors and assigns, its property, or the Assets.

13. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing an Encumbrance in the Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or other releases of

all Encumbrances which the person or entity has with respect to the Assets, then (i) the Debtor is authorized to execute at Closing, and within two (2) business days thereafter, file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Assets, and (ii) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances in the Assets of any kind or nature whatsoever.

14. On the Closing of the Sale of the Assets pursuant to the Purchase Agreement, all parties are authorized to execute such documents and take all actions as may be necessary to release their Encumbrances in the Assets, if any, as such Encumbrances may have been recorded or may otherwise exist. All persons and entities that are in possession of any of the Sale Assets are directed to surrender possession of such Assets to Purchaser at the Closing.

15. This Order (i) shall be effective as a determination that, as of the Closing, all Encumbrances of any kind or nature whatsoever existing as to the Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

No Successor Liability

16. Consummation of the Purchase Agreement and the transactions contemplated thereby and therein do not effect a de facto merger or consolidation of the Debtor with Purchaser. Purchaser is not the alter ego of, a successor-in-interest to, or a continuation of the Debtor. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Purchase Agreement, to the extent allowed by law, the Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character including, but not limited to, any such liability that may be imposed by statute (e.g., under so-called "bulk-sale" laws) or any theory of antitrust, environmental, products liability, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the ownership or operation of the Assets prior to the Closing.

17. Except to the extent Purchaser otherwise specifically agreed in the Purchase Agreement or this Order, Purchaser shall have no liability, responsibility or obligation for any claims, liabilities or other obligations of the Debtor or its Estate, including without limitation, any claims, liabilities or other obligations related to the Assets prior to Closing. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtor for any Encumbrance against, in or to the Debtor or the Assets.

18. The Sale of the Assets shall not be subject to any Encumbrances, and Encumbrances of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtor. All persons holding Encumbrances against the Assets of any kind or

nature whatsoever (including but not limited to, the Debtor and/or its respective successors, including any trustee, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, or the Assets, as an alleged successor or otherwise, with respect to any Encumbrance of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, the Estate, officers, directors, shareholders, or the Assets. Following the Closing, no holder of an Encumbrance in the Debtor shall interfere with the Purchaser's title to or use and enjoyment of the Assets based on or related to such Encumbrance, or any actions that the Debtor may take in the Bankruptcy Case.

*Binding Nature of the Order*

19. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all parties-in-interest in the Estate and the Bankruptcy Case, all successors and assigns of the Purchaser, the Debtor and their affiliates, subsidiaries and parents, the Assets, and any trustee appointed or elected in the Bankruptcy Case or upon a conversion to chapter 7 of the Bankruptcy Code and shall not be subject to rejection pursuant to section 365 of the Bankruptcy Code. Nothing contained in any chapter 11 plan confirmed in the Bankruptcy Case or the order confirming any such chapter 11 plan shall conflict with, impair, negate or be contrary to inconsistent with the provisions of the Purchase Agreement or this Order. To the extent of any such inconsistency, the terms of the Purchase Agreement and this Order shall govern.

20. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, the Related Purchase Agreements, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (ii) interpret, implement, and enforce the provisions of this Order, (iii) protect the Purchaser against (a) any of the Debtor's liabilities including specifically the Excluded Liabilities or (b) any Encumbrances against, in or to the Assets, of any kind or nature whatsoever, which attach to the proceeds of the Sale of the Assets; *provided, however*, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Purchase Agreement or this Order, such abstention, refusal to exercise, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

21. The terms and provisions of the Purchase Agreement, the Related Purchase Agreements and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, the Estate, its creditors and direct and indirect equity holders, and all parties-in-interest, the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an Encumbrance in the Assets to be sold to the Purchaser pursuant to the Purchase Agreement. Notwithstanding any subsequent appointment or election of any trustee(s), responsible officer, or other fiduciary or representative under any section of any chapter of the Bankruptcy Code, such trustee(s), responsible officer, or other fiduciary or representative shall be bound by the terms and provisions of the Purchase Agreement, the Related Purchase Agreements and this Order.

22. The provisions of this Order and the terms and conditions of the Purchase Agreement and the Related Purchase Agreements shall be binding upon, fully enforceable against and inure to the benefit of any trustee, responsible officer or other fiduciary appointed under any section of the Bankruptcy Code or any applicable law. Such binding effect is an integral part of the Sale and this Order.

Miscellaneous

23. Buyer agrees to withhold the amount of the State Tax Payment from the payment of the Purchase Price as provided in Section 2.1(c) of the Purchase Agreement and remit such State Tax Payment directly to the Virginia state tax authority on the Closing Date or the first business day after the Closing Date.

24. The failure specifically to include any particular provisions of the Purchase Agreement or the Related Purchase Agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and the Related Purchase Agreements be authorized and approved in their entirety. Notwithstanding the foregoing, to the extent of any inconsistency between this Order, the Purchase Agreement or either Related Purchase Agreement, the terms of this Order shall govern.

25. The Purchase Agreement, the Related Purchase Agreements and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Estate.

26. The provisions of this Order are nonseverable and mutually dependent.

27. Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the

transaction contemplated by the Purchase Agreement based upon any arrangement made by or on behalf of the Seller, provided that nothing herein shall relieve the Seller of its obligations to make payments, pursuant to applicable orders of this Court, to professionals retained in these cases

No Stay Pursuant to FED. R. BANK. P. 6004(h)

28. The stay of orders authorizing the (i) use, sale, or lease of property as provided for in FED. R. BANK. P. 6004(h) shall not apply to this Order, and this Order is immediately effective and enforceable.

**SO ORDERED.**

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
Honorable Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT G**

**TOOL REMOVAL AND MAINTENANCE PROCEDURES**

[See Attached]



## **EXHIBIT G**

### **TOOL REMOVAL AND MAINTENANCE PROCEDURES**

(a) Coordinators. Each of Seller and Buyer shall designate and authorize a representative (the "Seller Removal Coordinator" and "Buyer Removal Coordinator", respectively; and jointly, the "Coordinators") to act as a central point of coordination regarding activities at the Premises during the Removal Period. Per Buyer's request, the Coordinators shall confer and meet to share a report on progress toward completion of the Disassembly and Removal efforts. For clarification, Buyer is responsible for decontamination of the Assets only, and is not responsible for decontamination of the Premises (including, without limitation, any pipes, ducts or other infrastructure not being acquired by Buyer).

(b) Removal by Other Persons; Co-Located Assets. The Coordinators will ensure that Buyer's removal activities will be aligned with any other activity within the Premises to avoid delays to Buyer's Disassembly and Removal. Seller Removal Coordinator will provide two (2) business days notice to the Buyer Removal Coordinator if another party requires access to the Premises in order to remove any tools or other assets that are not included in the Assets. The Coordinators will ensure that such removal activities by other parties will minimally impact Buyer's Disassembly and Removal efforts. Upon thirty (30) business days written notice by Buyer Removal Coordinator, Seller shall provide support cooperation to remove or secure the removal or relocation of any co-located equipment or similar items (i.e., items that are not part of the Assets) which may impede Buyer's removal of the Assets. If Seller has not complied within twenty (20) business days following the written notice, Buyer Removal Coordinator shall provide a second written notice to the Seller Removal Coordinator. If Seller fails to remove/relocate such equipment within ten (10) business days following the second notice, Buyer may relocate such equipment, at Seller's expense.

(c) Access to Premises Equipment and Systems. Seller Removal Coordinator will cooperate to ensure that where Buyer's removal activity requires access to or the support of any Premises utilities or infrastructure (e.g., power, water, exhaust, vacuum, drain lines or waste treat/pre-treat, etc.) such access and support will be provided at no additional cost. Such cooperation shall include coordination to facilitate the short-term storage and/or treatment and disposal of hazardous wastes or materials generated in connection with Buyer's on-site decontamination and equipment removal activity. Subject to full compliance with applicable Law and Permit requirements, such cooperation shall also include access to and the use of the existing Permits, treatment equipment and permitted discharge points at the Premises. Seller Removal Coordinator will verify that the proper and safe capping, tie-off or other disconnection is made between the Assets and the Premises infrastructure and utilities. Seller will maintain, provide and allow Buyer the full use of any and all existing rigging tools, including forklifts, pallet jacks and other such equipment (to the extent, if any, such tools are not part of the Assets), to facilitate Buyer's removal of the Assets and Seller will provide Buyer and Buyer's Representatives with full access to and the use of all existing docks (for the purpose of staging, prepping, packing and crating the Assets prior to removal) and a portion of the surrounding areas, to the extent it is not maintained as a separate secure area for those assets to be retained by Seller that may be easily moved or transported to such separate secure area. Should Seller Removal Coordinator need to allocate the use of Premises areas among multiple parties, Seller

Removal Coordinator shall fairly allocate such access and areas in rough proportion to the quantity and value of assets purchased by each party, the time periods given for such removal and the number of employees, consultants and other representatives at the Premises assisting in such removal and recognizing the mutual commitment of Buyer and Seller to Buyer's prompt completion of Disassembly and Removal. Where Buyer's removal activity requires the removal of any walls or other structures, the enlargement of any openings, or other such impacts to the Premises, Buyer Removal Coordinator will provide advance notice of such activity and Buyer will ensure that any impacts or changes to the Premises are repaired and restored, unless otherwise mutually agreed. Buyer will ensure that any holes, depressions or other such potentially unsafe flooring areas are filled or covered following removal of any Assets (Buyer shall not be required to resurface or otherwise fully restore or replace such flooring or connection points).

(d) Service and Maintenance. At all times during the Removal Period, Seller shall provide the following services:

(i) provide HVAC service such that the indoor temperature and humidity are at levels which will allow the Assets to be operated and/or maintained without damage or degradation; The factory should remain within the following parameters.

<b>FAB2 Temperature</b>	<b>64.0 - 75.0 degF</b>	As measured in interstitial above PHOTO
<b>FAB2 Relative Humidity</b>	<b>30% - 50%</b>	As measured in interstitial above PHOTO
<b>FAB2 Pressurization</b>	<b>&gt; 0.01 "WC</b>	Photo running more positive to other areas (~0.02")
<b>FAB2 Particle Counts</b>	<b>&lt; 1000 0.5 micron particles</b>	ISO Class 6

(ii) provide utility service, including, without limitation, electrical service, including back-up power, potable water, sanitary water, and natural gas, fully functional Industrial Waste Treatment plant, the availability of Ultra Pure Water / Deionized Water, Nitrogen (N2), Compressed Dry Air (CDA), and the central vacuum system.

(iii) such that the Assets can be maintained in the same manner as they were being maintained immediately prior to the date hereof and such that the Assets can be operated and/or maintained without material damage or degradation;

(iv) continue to maintain the books, records, logs, warranties and any other records or documents relating to the purchase, use, maintenance, operation, replacement or repair of the Assets in the ordinary course of business and consistent with Seller's past practice and in a manner to ensure that at the end of the Removal Period, such documents are up-to-date;

(v) otherwise keep and maintain the inside and outside of the Premises in a clean and neat condition and promptly make any necessary repairs and/or replacements to the roof, structure and the mechanical, electrical and plumbing systems serving the Assets, all such that the Premises is suitable for the maintenance and operation of the Assets and such that no damage or degradation shall occur with respect to the Assets;

(vi) comply with all applicable Laws and all reasonable recommendations of any fire and liability insurance rating organization now or hereafter in effect.

(vii) Immediately notify the Buyer Removal Coordinator of any lapses in compliance of the requirements set forth in this exhibit.

(viii) continue to maintain maintenance/monitoring outlined in the below table:

	Per week
Daily Air Permit Rounds	7
HVAC outside	7
Fab1 Outside	3
Fab2 Outside	3
Cub 1 Boiler/Chiller	7
Cub 2 Boiler/Chiller	7
CUB1/FAB1 UPW	7
CUB2/FAB2 UPW	7
UPW Lab Analysis	1
IWT	3
IWT Cub/Fabs	3
Fab1/Subfab	7
Fab2/Subfab	7
Fab1 Lens purge checks	7
Fab 2 Lens purge checks	7
Air Products	7
K Bld Unoccupied space	1
A Bld Unoccupied space	1
C Bld Unoccupied space	1
Totals	93

(e) Payment of Service and Maintenance Cost and Expenses. Seller and Buyer shall pay the costs and expenses incurred in connection with the general maintenance and service of the Premises and the Assets as follows:

(i) From the Closing Date the date that is six months after the Closing Date, Seller shall be responsible for facility maintenance costs of the Premises (the "Seller Maintenance Period").

(ii) From the date immediately following the end of the Seller Maintenance Period, to the date that is nine months after the Closing Date, Buyer and Seller shall jointly share the facility maintenance costs of the Premises, with such costs allocated between the Buyer and Seller according to the original acquisition cost of the Assets remaining on the Premises compared to other assets on the Premises (calculated using the actual cost of such Assets) (the "Pro Rata Maintenance Period").

(iii) From the date that is nine months after the Closing Date, until the end of the Removal Period, Buyer shall be responsible for facility maintenance costs of the Premises (the "Buyer Maintenance Period"). During the Buyer Maintenance Period, Buyer shall pay Seller a rental fee for access to and use of the Premises calculated at a per month cost of \$50.00 per square foot based upon the square footage occupied by the Assets still located at the Premises; provided that the rental fee shall be prorated and automatically waived on a day-by-day basis for each day that the Buyer's removal activities are prevented or materially limited by

reason of Seller's failure to perform its obligations hereunder or as a result of acts of God, floods, fires, storms, earthquakes, major accidents, riots, demonstrations, acts of terrorism, sabotage, decrees of an extraordinary nature, inability to obtain or unavoidable delay in obtaining necessary power to the Premises. If Buyer's removal activities are prevented or materially limited as provided above, Buyer shall use all commercially reasonable efforts to remedy the cause of such prevention or material limitation.

Notwithstanding the foregoing, during all periods where Seller is responsible for all or a portion of the facility maintenance costs, Buyer shall cooperate to the extent commercially reasonable with the Seller to mitigate any such costs. Other than the cost sharing models described in subsection (e) (facility maintenance costs) and subsection (f) (security), Seller shall comply with the terms of this Exhibit G at no additional cost to Buyer. As used herein, "facility maintenance costs" shall include the cost and expense of providing utility services to the Premises, including, without limitation, HVAC service and electrical service, including back-up power, potable water, sanitary water, and natural gas, fully functional Industrial Waste Treatment plant, the availability of Ultra Pure Water / Deionized Water, Nitrogen (N2), Compressed Dry Air (CDA), and the central vacuum system.

(f) Security.

(i) Seller will (A) maintain the current security practices and procedures in place at the Premises in the ordinary course of business and consistent with its past practices and (B) continue to manage the day to day operation of the security guard staff.

(ii) Buyer will maintain a security presence on the Premises for the duration of the Removal Period. These resources will be employed by Buyer and will work in conjunction with Seller's security team to ensure that all Assets are protected according to Buyer's standards and guidelines.

(iii) Seller will continue to furnish contract security officers to the Premises and agrees to increase the staff up to twenty (20) officers as needed at the sole discretion and expense of Buyer.

(iv) Buyer will have limited remote access to specified video cameras. Buyer will have the right to expand the CCTV and the access control system at its cost to better enhance the viewing capabilities and the access control for the security of the Assets.

(v) Seller agrees that Buyer will have the ability to move the Assets to an area or areas designated to be a safe zones. These safe zones will have limited access from outside parties allowing Buyer to maintain a secure and controlled environment. Buyer will maintain, control and determine the access list of all parties allowed into the safe zones.

(g) Obligations of Buyer Parties During Disassembly and Removal. The Buyer Parties shall:

(i) utilize industry-standard safety protocols at all times (including, but not limited to, lockout/tagout, rigging, training and personal protective equipment);

(ii) notify Seller of and reasonably coordinate with Seller to properly respond to any environmental, safety or industrial hygiene-related incident resulting from their extraction efforts (including, but not limited to, near miss incidents, injuries, property damage or chemical/water release);

(iii) ensure any shipment of Assets complies with applicable regulatory requirements, including hazardous materials transportation;

(iv) disconnect and cap all piping, gas lines, etc. at or below floor level (or at or above 7 feet for lines coming from the ceiling) using industry-standard termination methods;

(v) provide for the transportation and disposal at the Premises of any hazardous waste materials contained within the Assets; provided, however, that (A) Seller will allow Buyer to purge any contaminated line through its existing operational pre-treat system which is connected to a currently permitted industrial wastewater disposal system or through its currently permitted air emissions point, as applicable, and (B) Seller will maintain responsibility for removal of solid waste materials;

(vi) verify that all services or utilities (including gas lines, electrical cabling and chemical supplies) are safe with respect to potential energy released prior to removal;

(vii) terminate and secure electrical supply wiring at the tool load point with appropriate lockout/tagout at the main panel;

(viii) provide at its sole expense, dumpsters for trash for Buyer's use and Buyer will dispose of trash resulting from the Disassembly and Removal; and

(ix) remove each Asset from the production floor and be responsible for crating and transporting from the Premises.

(h) Termination of Removal Period. Buyer Removal Coordinator shall provide Seller Removal Coordinator with written notice of completion of Disassembly and Removal and any repair, restoration, making safe or tying/off and capping of infrastructure connections points at the Premises. Within five (5) business days of receipt of such notice, Seller Removal Coordinator shall inspect the Premises and either (a) provide written acknowledgment of the satisfactory Disassembly and Removal, or (b) identify any remaining actions reasonably believed to be necessary to complete the Disassembly and Removal. Failure to identify any remaining actions or otherwise acknowledge such notice shall be deemed to constitute acceptance. Such acceptance or other written mutual agreement that removal has been successfully completed will terminate the Removal Period.

(i) Seller's Failure to Comply. If Seller fails to comply with its obligations under this Exhibit G, Buyer may give Seller written notice of such failure. If Seller does not perform such actions after receiving such notice, Buyer may perform such actions at Seller's expense.

**EXHIBIT H**

**STALKING HORSE ORDER**

[See Attached]

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X	)	
In re:	)	Chapter 11
	)	
QIMONDA RICHMOND, LLC <u>et. al.</u>	)	Case No. 09-10589 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
-----X		

**QIMONDA RICHMOND, LLC TO AWARD BIDDING PROTECTIONS TO TEXAS INSTRUMENTS INCORPORATED AND (II) AFFORDING THE PAYMENT OF THE BIDDING PROTECTIONS ADMINISTRATIVE EXPENSE TREATMENT UNDER SECTIONS 503 AND 507 OF THE BANKRUPTCY CODE**

Upon consideration of the *Notice of Entry Into Stalking Horse Agreement with Texas Instruments Incorporated and Proposed Bidding Protections and Bidding Procedures with Respect Thereto* (the “Stalking Horse Notice”); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157, and (iii) notice of the Stalking Horse Notice was sufficient under the circumstances and that no other or further notice need be provided; and the Court having received the certificate of no objection with respect to the Stalking Horse Notice; and upon the *Declaration of Robert J Maroney in Support of Bidding Protections* (the “Maroney Declaration”); and the Court having determined that the legal and factual bases set forth in the Stalking Horse Notice and in the Maroney Declaration establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Stalking Horse Notice and in the Maroney Declaration is in the best interests of the above captioned debtors and debtors in possession (collectively, the “Debtors”) and their estates, as well as stakeholders thereof, and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Bidding Protections contained in the Asset Purchase Agreement between Texas Instruments Incorporated and Qimonda Richmond, LLC, dated as of August 19, 2009, a copy of which is annexed hereto as Exhibit A (the “Stalking Horse”

Removal Coordinator shall fairly allocate such access and areas in rough proportion to the quantity and value of assets purchased by each party, the time periods given for such removal and the number of employees, consultants and other representatives at the Premises assisting in such removal and recognizing the mutual commitment of Buyer and Seller to Buyer's prompt completion of Disassembly and Removal. Where Buyer's removal activity requires the removal of any walls or other structures, the enlargement of any openings, or other such impacts to the Premises, Buyer Removal Coordinator will provide advance notice of such activity and Buyer will ensure that any impacts or changes to the Premises are repaired and restored, unless otherwise mutually agreed. Buyer will ensure that any holes, depressions or other such potentially unsafe flooring areas are filled or covered following removal of any Assets (Buyer shall not be required to resurface or otherwise fully restore or replace such flooring or connection points)

(d) Service and Maintenance. At all times during the Removal Period, Seller shall provide the following services:

(i) provide HVAC service such that the indoor temperature and humidity are at levels which will allow the Assets to be operated and/or maintained without damage or degradation; The factory should remain within the following parameters

<b>FAB2 Temperature</b>	<b>64.0 - 75.0 degF</b>	As measured in interstitial above PHOTO
<b>FAB2 Relative Humidity</b>	<b>30% - 50%</b>	As measured in interstitial above PHOTO
<b>FAB2 Pressurization</b>	<b>&gt; 0.01 "WC</b>	Photo running more positive to other areas (~0.02")
<b>FAB2 Particle Counts</b>	<b>&lt; 1000 0.5 micron particles</b>	ISO Class 6

(ii) provide utility service, including, without limitation, electrical service, including back-up power, potable water, sanitary water, and natural gas, fully functional Industrial Waste Treatment plant, the availability of Ultra Pure Water / Deionized Water, Nitrogen (N2), Compressed Dry Air (CDA), and the central vacuum system.

(iii) such that the Assets can be maintained in the same manner as they were being maintained immediately prior to the date hereof and such that the Assets can be operated and/or maintained without material damage or degradation;

(iv) continue to maintain the books, records, logs, warranties and any other records or documents relating to the purchase, use, maintenance, operation, replacement or repair of the Assets in the ordinary course of business and consistent with Seller's past practice and in a manner to ensure that at the end of the Removal Period, such documents are up-to-date;

(v) otherwise keep and maintain the inside and outside of the Premises in a clean and neat condition and promptly make any necessary repairs and/or replacements to the roof, structure and the mechanical, electrical and plumbing systems serving the Assets, all such that the Premises is suitable for the maintenance and operation of the Assets and such that no damage or degradation shall occur with respect to the Assets;



(vi) comply with all applicable Laws and all reasonable recommendations of any fire and liability insurance rating organization now or hereafter in effect.

(vii) Immediately notify the Buyer Removal Coordinator of any lapses in compliance of the requirements set forth in this exhibit.

(viii) continue to maintain maintenance/monitoring outlined in the below table:

	Per week
Daily Air Permit Rounds	7
HVAC outside	7
Fab1 Outside	3
Fab2 Outside	3
Cub 1 Boiler/Chiller	7
Cub 2 Boiler/Chiller	7
CUB1/FAB1 UPW	7
CUB2/FAB2 UPW	7
UPW Lab Analysis	1
IWT	3
IWT Cub/Fabs	3
Fab1/Subfab	7
Fab2/Subfab	7
Fab1 Lens purge checks	7
Fab 2 Lens purge checks	7
Air Products	7
K Bld Unoccupied space	1
A Bld Unoccupied space	1
C Bld Unoccupied space	1
Totals	93

(e) Payment of Service and Maintenance Cost and Expenses. Seller and Buyer shall pay the costs and expenses incurred in connection with the general maintenance and service of the Premises and the Assets as follows:

(i) From the Closing Date the date that is six months after the Closing Date, Seller shall be responsible for facility maintenance costs of the Premises (the "Seller Maintenance Period")

(ii) From the date immediately following the end of the Seller Maintenance Period, to the date that is nine months after the Closing Date, Buyer and Seller shall jointly share the facility maintenance costs of the Premises, with such costs allocated between the Buyer and Seller according to the original acquisition cost of the Assets remaining on the Premises compared to other assets on the Premises (calculated using the actual cost of such Assets) (the "Pro Rata Maintenance Period").

(iii) From the date that is nine months after the Closing Date, until the end of the Removal Period, Buyer shall be responsible for facility maintenance costs of the Premises (the "Buyer Maintenance Period"). During the Buyer Maintenance Period, Buyer shall pay Seller a rental fee for access to and use of the Premises calculated at a per month cost of \$50.00 per square foot based upon the square footage occupied by the Assets still located at the Premises; provided that the rental fee shall be prorated and automatically waived on a day-by-day basis for each day that the Buyer's removal activities are prevented or materially limited by

reason of Seller's failure to perform its obligations hereunder or as a result of acts of God, floods, fires, storms, earthquakes, major accidents, riots, demonstrations, acts of terrorism, sabotage, decrees of an extraordinary nature, inability to obtain or unavoidable delay in obtaining necessary power to the Premises. If Buyer's removal activities are prevented or materially limited as provided above, Buyer shall use all commercially reasonable efforts to remedy the cause of such prevention or material limitation.

Notwithstanding the foregoing, during all periods where Seller is responsible for all or a portion of the facility maintenance costs, Buyer shall cooperate to the extent commercially reasonable with the Seller to mitigate any such costs. Other than the cost sharing models described in subsection (e) (facility maintenance costs) and subsection (f) (security), Seller shall comply with the terms of this Exhibit G at no additional cost to Buyer. As used herein, "facility maintenance costs" shall include the cost and expense of providing utility services to the Premises, including, without limitation, HVAC service and electrical service, including back-up power, potable water, sanitary water, and natural gas, fully functional Industrial Waste Treatment plant, the availability of Ultra Pure Water / Deionized Water, Nitrogen (N2), Compressed Dry Air (CDA), and the central vacuum system.

(f) Security.

(i) Seller will (A) maintain the current security practices and procedures in place at the Premises in the ordinary course of business and consistent with its past practices and (B) continue to manage the day to day operation of the security guard staff.

(ii) Buyer will maintain a security presence on the Premises for the duration of the Removal Period. These resources will be employed by Buyer and will work in conjunction with Seller's security team to ensure that all Assets are protected according to Buyer's standards and guidelines.

(iii) Seller will continue to furnish contract security officers to the Premises and agrees to increase the staff up to twenty (20) officers as needed at the sole discretion and expense of Buyer.

(iv) Buyer will have limited remote access to specified video cameras. Buyer will have the right to expand the CCTV and the access control system at its cost to better enhance the viewing capabilities and the access control for the security of the Assets.

(v) Seller agrees that Buyer will have the ability to move the Assets to an area or areas designated to be a safe zones. These safe zones will have limited access from outside parties allowing Buyer to maintain a secure and controlled environment. Buyer will maintain, control and determine the access list of all parties allowed into the safe zones.

(g) Obligations of Buyer Parties During Disassembly and Removal. The Buyer Parties shall:

(i) utilize industry-standard safety protocols at all times (including, but not limited to, lockout/tagout, rigging, training and personal protective equipment);

(ii) notify Seller of and reasonably coordinate with Seller to properly respond to any environmental, safety or industrial hygiene-related incident resulting from their extraction efforts (including, but not limited to, near miss incidents, injuries, property damage or chemical/water release);

(iii) ensure any shipment of Assets complies with applicable regulatory requirements, including hazardous materials transportation;

(iv) disconnect and cap all piping, gas lines, etc. at or below floor level (or at or above 7 feet for lines coming from the ceiling) using industry-standard termination methods;

(v) provide for the transportation and disposal at the Premises of any hazardous waste materials contained within the Assets; provided, however, that (A) Seller will allow Buyer to purge any contaminated line through its existing operational pre-treat system which is connected to a currently permitted industrial wastewater disposal system or through its currently permitted air emissions point, as applicable, and (B) Seller will maintain responsibility for removal of solid waste materials;

(vi) verify that all services or utilities (including gas lines, electrical cabling and chemical supplies) are safe with respect to potential energy released prior to removal;

(vii) terminate and secure electrical supply wiring at the tool load point with appropriate lockout/tagout at the main panel;

(viii) provide at its sole expense, dumpsters for trash for Buyer's use and Buyer will dispose of trash resulting from the Disassembly and Removal; and

(ix) remove each Asset from the production floor and be responsible for crating and transporting from the Premises.

(h) Termination of Removal Period. Buyer Removal Coordinator shall provide Seller Removal Coordinator with written notice of completion of Disassembly and Removal and any repair, restoration, making safe or tying/off and capping of infrastructure connections points at the Premises. Within five (5) business days of receipt of such notice, Seller Removal Coordinator shall inspect the Premises and either (a) provide written acknowledgment of the satisfactory Disassembly and Removal, or (b) identify any remaining actions reasonably believed to be necessary to complete the Disassembly and Removal. Failure to identify any remaining actions or otherwise acknowledge such notice shall be deemed to constitute acceptance. Such acceptance or other written mutual agreement that removal has been successfully completed will terminate the Removal Period.

(i) Seller's Failure to Comply. If Seller fails to comply with its obligations under this Exhibit G, Buyer may give Seller written notice of such failure. If Seller does not perform such actions after receiving such notice, Buyer may perform such actions at Seller's expense.

Agreement”) and the Bidding Procedures annexed hereto as Exhibit B are hereby approved and shall govern the sale of the Assets; and it is further

ORDERED, that QR is authorized to award the Break Up Fee and Expense Reimbursement to the Stalking Horse Bidder on the terms provided for in the Stalking Horse Agreement; and it is further

ORDERED, that the Break Up Fee and Expense Reimbursement shall be treated as administrative expenses under sections 503(b)(1) and 507(a)(2) of title 11 of the United States Code and shall be paid in accordance with the Bidding Procedures; and it is further

ORDERED, that if QR receives a Qualified Bid for the Assets prior to the bid deadline of September 21, 2009 at 4:00 p.m. (prevailing New York City time), the Debtors will conduct an auction for the Assets on September 23, 2009 at 10:00 a.m. (prevailing New York City time) at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (the “Auction”); and it is further

ORDERED, that the Debtors shall provide notice of the Auction in the form annexed hereto as Exhibit A (the “Auction Notice”) by (a) serving the Auction Notice on all parties whom the Debtors, their advisors and the Committee’s Professionals have indicated as parties who have previously shown interest in or may be interested in purchasing the Assets, (b) publishing the Auction Notice in the national edition of *The Wall Street Journal* within seven (7) business days of entry of this Order; and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE MARY F WALRATH  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit A**

### **THE BIDDING PROCEDURES**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the proposed sale (the "Proposed Sale") of certain assets of Qimonda Richmond LLC (the "Debtor"). The Debtor will seek entry of an order from the Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") authorizing and approving the Proposed Sale to the Buyer (defined below) or to another Qualified Bidder (defined below) that is determined to have made the highest, best or otherwise financially superior offer (the "Sale Transaction"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order and the Purchase Agreement (each as defined below, as applicable).

#### **Asset Purchase Agreement**

On August 19, 2009, the Debtor entered into an asset purchase agreement (the "Purchase Agreement") with Texas Instruments Incorporated (the "Buyer"). Pursuant to the Purchase Agreement, the Buyer proposes to acquire the Assets (as defined in the Purchase Agreement) free and clear of Encumbrances (as defined in the Purchase Agreement).

Recognizing the Buyer's expenditure of significant time, energy, and resources, the Debtor has agreed to provide certain bidding protections to the Buyer. Specifically, the Debtor has determined that the Purchase Agreement furthers the goals of the Bidding Procedures by setting a floor by which all other Qualified Bids (defined below) must exceed. As a result, in accordance with Section 6.7 of the Purchase Agreement, the Debtor has agreed that if the Buyer is not the Successful Bidder (defined below), the Debtor will, in certain circumstances, reimburse the Buyer for certain of its expenses of up to \$750,000 (the "Expense Reimbursement") and pay to the Buyer a breakup fee equal to Four Million Three Hundred Twelve Thousand Five Hundred Dollars (\$4,312,500) (the "Breakup Fee"). The Buyer will have an opportunity to "credit bid" such Breakup Fee in any subsequent bids it elects to make in the Auction (defined below).

The Buyer is a Qualified Bidder (defined below), and the Purchase Agreement is a Qualified Bid (defined below). The Buyer's offer to purchase the Assets as set forth in the Purchase Agreement may be terminated by the Buyer pursuant to the terms and conditions set forth in Section 8.1 of the Purchase Agreement.

#### **The Bidding Process**

On July 21, 2009, the Bankruptcy Court entered an Order Granting Debtors' Motion, Pursuant to Sections 105(a), 105(d) and 363(b) of the Bankruptcy Code, for Entry of an Order Approving Bidding Protection Procedures and Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors (Docket No. 511) (the "Bidding Procedures Order").

Subject to the Bidding Procedures Order, the Debtor and its advisors shall (i) determine whether any bid for the Assets is a Qualified Bid, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate in good faith any offers made to purchase the Assets (collectively, the “Bidding Process”). The Debtor shall consult with certain restricted members of the Official Committee of Unsecured Creditors (the “Committee”) and its professionals and comply with the GECC Consultation Right (as defined below), regarding the Debtor’s determination as to whether bids are Qualified Bids and bidders are Qualified Bidders. Only Qualified Bidders may participate in the Bidding Process and bid at the Auction. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not a Qualified Bidder, and the Debtor and its professionals shall use good faith efforts to provide all Qualified Bidders with substantially similar information. The Debtors, after consultation with the Committee’s professionals, shall have the right to adopt such other rules for the Bidding Process (so long as such rules are not materially inconsistent with those set forth herein and in the Purchase Agreement) that promote the goals of the Bidding Process.

### **Participation Requirements**

Any person that wishes to participate in the Bidding Process (a “Potential Bidder”) must become a “Qualified Bidder”. As a prerequisite to becoming a Qualified Bidder (and thus, among other things, prior to being able to conduct due diligence), a Potential Bidder must deliver (unless previously delivered) to the Debtor, on or before September 21, 2009 at 4:00 p.m. (prevailing New York City time) :

- (i) An executed confidentiality agreement in form and substance acceptable to the Debtor; and
- (ii) Sufficient information, as requested by the Debtor, to allow the Debtor to determine that the Potential Bidder has the financial wherewithal and any required authorizations to close the Sale Transaction, including, but not limited to, current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtor) of the Potential Bidder or of those entities that will guarantee the obligations of the Potential Bidder.

A Qualified Bidder is a Potential Bidder that (a) delivers the documents described in subparagraphs (i) - (ii) above, (b) individually offers, or offers in combination with other bidders (subject to the restrictions contained herein), to purchase all of the Assets (as defined in the Purchase Agreement) and not some subset or portion of the Assets, and (c) that the Debtor determines is reasonably likely (based on financial information submitted by the Potential Bidder, the availability and amount of financing,

experience and other considerations deemed relevant by the Debtor) to submit a bona fide offer and to be able to consummate a sale of the Assets if selected as a Successful Bidder.

Notwithstanding anything herein to the contrary, (i) General Electric Capital Corporation (“GECC”) shall be deemed a Qualified Bidder, (ii) if GECC submits all Required Bid Documents in accordance with the terms of the Bid Procedures, such a bid submitted by GECC shall be deemed a Qualified Bid, and (iii) GECC shall have the right to submit a credit bid pursuant to section 363(k) of the Bankruptcy Code for GECC Equipment (as defined in the Bidding Procedures Order).

The Debtor shall consult with the Committee’s professionals and restricted members and comply with the GECC Consultation Right in connection with the Debtor’s determinations as to whether a Potential Bidder is a Qualified Bidder. No later than seven (7) business days after a Potential Bidder delivers all of the materials required by subparagraphs (i) - (ii) above, the Debtor shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder.

#### **Due Diligence**

The Debtor may afford any Potential Bidder or Qualified Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (defined below). The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders or Qualified Bidders. Neither the Debtor nor any of its respective representatives are obligated to furnish any information to any person other than a Potential Bidder or Qualified Bidder.

#### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid to (i) Qimonda North America Corp., 4721 Emperor Boulevard, Suite 110, Durham, N.C. 27703 (Attn: Miriam Martinez and Scott Ryan); (ii) Advanced Technology Resource Group of CMN Inc. d/b/a Collier International, 601 Union Street, Suite 5300, Seattle, Washington 98101 (Attn: Nick Papa); and (iii) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (Attn: Morris J. Massel and D. Rhett Brandon), not later than 4:00 p.m. (prevailing New York City time) on September 21, 2009 (the “Bid Deadline”).

#### **Bid Requirements**

All initial bids must include the following documents (the “Required Bid Documents”):

- The identity of the bidder and the officer(s) or authorized agent(s) who will appear on behalf of such bidder;
- A purchase price, the value of which is determined by the Debtor (after consultation with the Committee’s professionals and restricted

members and compliance with the GECC Consultation Right) to be at least equal to or greater than the purchase price in the Purchase Agreement for the applicable Assets bid on plus \$5,500,000 (the "Initial Incremental Bid Amount");

- A letter stating that the bidder's offer is irrevocable until October 31, 2009 (as may be extended by written agreement of the parties) (the "Termination Date"); provided that the Termination Date will be automatically extended to November 30, 2009 if such bidder is the Successful Bidder after the conclusion of the Auction;
- An executed copy of a purchase agreement pursuant to which the Qualified Bidder proposes to acquire the Assets, which purchase agreement shall include the Termination Date; provided that the Termination Date will be automatically extended to November 30, 2009 if such bidder is the Successful Bidder after the conclusion of the Auction;
- A good-faith, cash deposit, which shall be made with the Debtor's escrow agent upon the submission of a Qualified Bid in an amount equal to at least 10% of the purchase price set forth in the applicable purchase agreement for such Qualified Bidder (the "Good Faith Deposit"); provided that for a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, the Good Faith Deposit shall only be a reduction of GECC's allowed secured claim by an amount equal to 10% of the purchase price set forth in GECC's purchase agreement, which shall be the sole and exclusive remedy in law, equity or otherwise for any and all breaches by GECC of the executed purchase agreement pursuant to which GECC proposes to acquire the applicable Assets in accordance with these Bidding Procedures;
- Written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor, with appropriate contact information for such financing sources, provided that for any bid that is entirely financed as a credit bid pursuant to section 363(k) of the Bankruptcy Code, no such evidence shall be required;
- A redline of bidder's proposed purchase agreement over that of the Purchase Agreement; and
- A redline of bidder's proposed form of sale order over the form of such order attached to the Purchase Agreement.

A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid". Promptly upon receipt of the Required Bid Documents by the Debtor from any Qualified Bidder, the Debtor shall provide a copy of such Required Bid Documents to the Buyer.



The Debtor reserves the right to determine, after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right, the value of any Qualified Bid(s) for the Assets, and which Qualified Bid(s) constitutes the highest, best or otherwise financially superior offer to purchase the Assets. Proposals will be evaluated on numerous grounds; however, proposals that are unconditional and contemplate sales of the Assets that may be consummated on or soon after the Sale Hearing are preferred.

### **"As Is, Where Is"**

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, its agents or its estate except to the extent set forth in the Purchase Agreement or the purchase agreement of another Successful Bidder. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidding Procedures Order or these Bidding Procedures or, (i) as to the Buyer, as expressly set forth in the Purchase Agreement and ancillary documents, or (ii) as to another Successful Bidder, as expressly set forth in the applicable purchase agreement and ancillary documents.

### **Free Of Any And All Encumbrances**

Except as otherwise provided in the Purchase Agreement or another Successful Bidder's purchase agreement, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of Encumbrances, with such Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Encumbrances applied against the Assets. Nothing herein shall prevent any party in interest from objecting to the Bankruptcy Court's approval of such purchase agreement.

### **Auction**

If a Qualified Bid other than that submitted by the Buyer has been received by the Debtor, the Debtor shall conduct an auction (the "Auction") with respect to the Assets. The Auction shall commence on September 23, 2009 at 10:00 a.m. (prevailing New York City time). The Debtor shall notify all Qualified Bidders that have submitted Qualified Bids of the time and place of the Auction.

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the highest Qualified Bid(s) as determined by the Debtor (after consultation with the Committee's professionals and restricted members) and subsequently continue in minimum increments of at least \$1,000,000.

At the conclusion of the Auction, the Debtor (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) shall identify the highest, best or otherwise financially superior offer for the Assets (the "Successful Bid(s)", and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best or otherwise financially superior offer will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination. The Qualified Bidder whose final bid is deemed to be highest and best following the conclusion of the Auction will be the "Successful Bidder", and such bid, the "Successful Bid". Immediately after the announcement of the Successful Bid, the Successful Bidder shall execute and deliver a purchase agreement incorporating the price and terms offered in the Successful Bid (the "Final Sale Agreement"). Upon submission of the Final Sale Agreement by the Successful Bidder, the Debtor will execute the Final Sale Agreement and shall seek Bankruptcy Court approval of the Final Sale Agreement at a hearing before the Bankruptcy Court.

### **Acceptance of Qualified Bids**

The Debtor shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after a hearing (the "Sale Hearing") and any and all liens on the Assets shall attach to the proceeds of the sale with the same validity and priority as such liens applied against the Assets. The Debtor's presentation of the Successful Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the bid. The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. All interested parties reserve their right to object to the Debtor's selection of the Successful Bidder.

### **Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on September 24, 2009 at 10:30 a.m. (prevailing New York City time). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within ten (10) business days after entry of an Order approving the Sale, the Debtor shall be authorized (after consultation with the Committee's professionals and compliance with the GECC Consultation Right), but not required, to deem the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtor (after consultation with the Committee's professionals and compliance with the GECC Consultation Right) shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

### **No Combination Bidding**

Qualified Bidders may not form joint ventures or partnerships to submit bids with respect to the Sale Transaction, without the prior written consent of the Debtor. Without limiting the generality of the foregoing, separate bidders on any Sale Transaction may not combine their bids without the prior written approval of the Debtor.

### **Return of Good Faith Deposit**

As noted above, all Qualified Bidders will be required to submit the Good Faith Deposit with the Debtor's escrow agent upon the submission of a Qualified Bid in the amount set forth in (i) the Purchase Agreement with respect to the Buyer and (ii) the applicable purchase agreement with respect to another Qualified Bidder. The Buyer's Deposit (as defined in the Purchase Agreement) shall be held in an interest-bearing account as specified in the Deposit Escrow Agreement (as defined in the Purchase Agreement) and will be returned to Buyer pursuant to the terms and conditions set forth in Section 2.1(b) of the Purchase Agreement. Good Faith Deposits of all other Qualified Bidders shall be held in an interest-bearing account until a proposal is no longer irrevocable as provided herein, at which time they will be returned to the Qualified Bidder (or in the case of a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, no reduction of GECC's allowed secured claim); provided, however, that if a Successful Bidder fails to consummate an approved sale solely because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or in the case of a GECC credit bid pursuant to section 363(k) of the Bankruptcy Code, GECC's allowed secured claim shall be reduced by an amount equal to 10% of the purchase price set forth in GECC's purchase agreement), and such Good Faith Deposit shall irrevocably become the property of the Debtor.

### **The Committee and GECC**

The Debtor shall provide to the Committee's professionals information, which information may be shared with restricted members of the Committee, regarding the qualification of bidders and such other information related to the sale of the Assets as may be reasonably requested by the Committee. Throughout the process, the Debtor shall consult with the Committee's restricted members and its professionals as provided herein.

The term "GECC Consultation Right" shall mean, if any GECC Equipment is proposed to be sold, that the Debtor (i) shall provide to GECC information regarding the qualification of bidders and such other information related to the sale of the Assets as may be reasonably requested by GECC and (ii) shall consult with GECC throughout the process as provided herein; provided, however, the Debtor shall not be required to consult with GECC if (y) GECC submits a Qualified Bid, or (z) GECC asserts that it has submitted a Qualified Bid, until such time as GECC's assertions are overruled by the Bankruptcy Court.

### **Bankruptcy Court Oversight**

The Bankruptcy Court shall decide any controversy regarding the qualification of bidders and the valuation of bids.

### **Reservation of Rights**

The Debtor reserves the right to (i) determine in its reasonable discretion (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) which offer for the Assets is the highest or otherwise best offer and (ii) reject at any time prior to entry of a Bankruptcy Court

order approving an offer for the Assets, without liability, any offer that the Debtor in its reasonable discretion (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) deems to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or procedures set forth therein or herein, or (z) contrary to the best interests of the Debtor and its estate.

The selection of a Successful Bidder shall be within the reasonable business judgment of the Debtor (after consultation with the Committee's professionals and restricted members and compliance with the GECC Consultation Right) and subject to the approval of the Bankruptcy Court, and economic considerations may not be the sole criteria upon which the Debtor may base its decision. In assessing whether a proposal constitutes a higher or otherwise better offer, the Debtor may consider, among other things, the net economic effect upon the Debtor's estate. The presentation of a particular proposal to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the proposal. The Debtor will be deemed to have accepted a proposal only when the proposal has been approved by the Bankruptcy Court at the Sale Hearing. At or before the Sale Hearing, the Debtor (after consultation with the Committee's professionals and compliance with the GECC Consultation Right) may impose such other terms and conditions on the Qualified Bidders as the Debtor may determine to be in the best interest of the Debtor, its estate, its creditors, and other parties in interest.