

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

XTERA COMMUNICATIONS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16- 12577

(Joint Administration Requested)

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO SECTIONS 105(a), 363, AND 365 OF THE BANKRUPTCY CODE FOR ENTRY OF ORDERS (I)(A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) SCHEDULING RELATED AUCTIONS AND A HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING BID PROTECTIONS; AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the "Debtors"), hereby move the Court (the "Motion"), pursuant to sections 105(a), 363, and 365 title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for an order (the "Bidding Procedures Order") (i)(a) approving

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<sup>[1]</sup> The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (4611); Xtera Communications Canada, Ltd. (9560); Xtera Communications Hong Kong Ltd. (4611); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 750133.

procedures in connection with the sale of substantially all of the Debtors' Assets (as defined below); (b) scheduling an auction (to the extent necessary) and a hearing to consider approval of sale; (c) approving procedures related to the assumption of certain executory contracts and unexpired leases; (d) approving the form and manner of notice thereof; (e) approving bid protections; and (f) granting related relief; and an order (the "Sale Order") (ii)(a) authorizing the sale of such assets free and clear of liens, claims, encumbrances and other interests, except as provided in the Stalking Horse Agreement (as defined below); (b) approving the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases; and (c) granting relief related relief. In support of the Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Joseph R. Chinnici in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed with the Court concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors consent, pursuant to Local Rule 9013-1(f), to the entry of a final judgment or order with respect to this Motion, if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief requested herein are sections 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1 and 6004-1.

## **BACKGROUND**

### **A. General Background.**

3. On the date hereof (the "Petition Date"), the Debtors commenced these bankruptcy cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner, or official committee of unsecured creditors (to the extent appointed, the "Creditors' Committee") has been appointed in these Chapter 11 Cases.

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, filed concurrently herewith and fully incorporated herein by reference.<sup>2</sup>

### **B. DIP Financing.**

6. The Debtors and one or more affiliates of H.I.G. European Capital Partners LLP ("H.I.G.," or the "DIP Lenders") entered into a debtor in possession financing facility (the "DIP Facility"), which consists of a single tranche term loan in the aggregate principal amount of up to \$7,409,793.00 million, all of which will be available upon entry of an interim order approving the DIP Facility, on the terms set forth in the debtor in possession credit agreement (the "DIP Financing Agreement") attached to the Debtors' motion to approve entry into same. The proceeds of the DIP Facility will be used to pay operating expenses and the costs and expenses of administering these chapter 11 cases subject to and in accordance with a budget, as well as the fees and expenses due under the DIP Facility. With respect to the interests of the

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Debtors' prepetition secured lender, Square 1 Bank, the DIP Lenders and Square 1 Bank have agreed to the following: to the extent that there is at least \$900,000 in cash available after the DIP Facility is satisfied in full, and the sum of \$1.7 million that is due to Jon R. Hopper, New Enterprise Associates 9, Limited Partnership, New Enterprise Associates 10, Limited Partnership, and ARCH Venture Fund VI, L.P. is paid, the next \$900,000 of cash will be remitted to Cowen and Company, the Debtors' investment bankers, for fees incurred, ahead of Square 1 Bank and Horizon Technology Finance Corporation. Any other fees to Cowen and Company shall be paid (in accordance with the orders of this Court) following the payment in full of Square 1 Bank and Horizon Technology Finance Corporation.

7. In the ordinary course of business, the Debtors require cash on hand and cash flow from their operations to fund their liquidity needs and operate their businesses. In addition, the Debtors require access to sufficient liquidity to fund these chapter 11 cases while working towards a successful sale transaction. Obtaining post-petition financing, in addition to the use of cash collateral, was necessary in order for the Debtors to have access to sufficient liquidity to maintain ongoing day-to-day operations, ensure proper servicing of customers post-petition, fund working capital needs, and allow the Debtors to pursue and successfully consummate a sale transaction.

**C. Marketing Process and Events Leading to the Commencement of these Cases.**

8. Prior to filing these Chapter 11 Cases, the Debtors, with the assistance of their advisors, undertook a focused marketing process to explore a broad range of strategic financing and sale options for the Debtors and their assets. Beginning in July 2016, the Debtors, together with their advisors, identified and contacted more than seventy (70) potential strategic or financial partners regarding a potential financing, sale, or other restructuring transaction.

9. Non-disclosure agreements were executed by nineteen (19) of such parties, and a management presentation prepared by the Debtors and their advisors containing information regarding, among other things, the Debtors' background and overview, industry overview, addressable market forecast, description of the Debtors' differentiated intellectual property, financial models and near term cash flow projections, was distributed to each party executing a non-disclosure agreement. In addition, the Debtors and their advisors provided these parties with access to a data room containing various documents and information regarding the Debtors, their businesses, and finances.

10. The Debtors and their advisors were in regular contact with these entities and facilitated such entities' due diligence efforts, including discussions around potential transaction scenarios. As a result of such efforts, the Debtors were able to reach an agreement with respect to the sale of substantially all of their assets (collectively, the "Assets"). More specifically, the Debtors' proposed DIP Lenders, expressed an interest in acquiring the Debtors' Assets, and serving, through an acquisition vehicle to be established for the purposes, as a stalking horse bidder for the sale of such Assets (the "Stalking Horse Purchaser"). The Debtors and the Stalking Horse Purchaser negotiated a transaction with respect to the sale of the Assets, and the Debtors and their advisors fully cooperated with and facilitated any due diligence requests with respect thereto.

11. With the express acknowledgement and consent of the Debtors and their senior management, certain of the Debtors' managers have consulted with the Stalking Horse Bidder in connection with the preparation of the Stalking Horse Bid. The Stalking Horse Bidder has reserved the right to solicit potential future employment of such managers and to enter into such

other agreements and arrangements relating thereto if the Stalking Horse Bidder is the Prevailing Bidder and acquires the Transferred Assets.

12. After careful evaluation and further negotiations, the Debtors determined that entering into the stalking horse purchase agreement (the “Stalking Horse Agreement”) with the Stalking Horse Purchaser with respect to the sale of the Assets presented the best option for the Debtors.

13. As a result of the Debtors’ efforts, the Debtors are filing this Motion to, among other things, approve certain bid procedures related to a sale under section 363 of the Bankruptcy Code to sell the Assets and approve the Stalking Horse Purchaser as the stalking horse purchaser for the Assets. In light of the Debtors’ liquidity constraints, an expedited sale of the Debtors’ businesses and assets is essential to not only preserve the underlying value of their operations by providing customers and employees with a clear path forward, but also to maximize the value of the Debtors’ assets for the benefit of their estates, creditors, and other parties in interest.<sup>3</sup>

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<sup>3</sup> Pursuant to the terms of the DIP Financing to be provided by H.I.G., the following milestones apply to the Sale of the Assets: (a) an order approving bidding procedures for the sale of the Assets and approving the Stalking Horse Purchaser shall have been entered within twenty-one (21) days of the Petition Date; (b) an order approving the sale of the Assets shall have been entered by the Court within seventy-five (75) days of the Petition Date; and (d) the closing of the sale of the Assets shall have occurred within ninety (90) days of the Petition Date.

**STALKING HORSE BID****a. The Assets**

14. The Debtors entered into that certain *Asset Purchase Agreement by and Between Xtera Communications, Inc. and H.I.G. Europe – Neptune, Ltd.*, dated on or about November 15, 2016,<sup>4</sup> pursuant to which the Stalking Horse Purchaser shall acquire the Assets on the terms and conditions specified therein. The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth therein and herein. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to purchase the Assets for a purchase price of \$10 million in cash, the assumption of certain liabilities, with a reduction in an amount set forth in the DIP Facility under the DIP Financing Agreement with respect to which Seller and the guarantors under the DIP Financing Agreement are joint and several obligors in full and final satisfaction of the obligations under the DIP Financing Agreement (as defined in the Stalking Horse Agreement), as applicable.<sup>5</sup>

15. The Stalking Horse Purchaser, in making this offer, has relied on promises by the Debtors to seek the Court's approval of (a) the payment of a breakup fee in the amount of 3% of the aggregate amount of the Purchase Price under the Stalking Horse Agreement if the Debtors enter into an Alternative Transaction (the "Break Up Fee"), (b) reimbursement of the reasonable fees, costs, and expenses incurred by the Stalking Horse Purchaser and its affiliates in connection with the transactions contemplated by the Stalking Horse Agreement, subject to a cap of \$500,000 (the "Expense Reimbursement"), and (c) the provision in the Bidding Procedures

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<sup>4</sup> A copy of the Stalking Horse Agreement is attached hereto as Exhibit A. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

<sup>5</sup> Under the Stalking Horse Agreement, the Stalking Horse Purchaser has the right to credit bid the purchase price under section 363(k) of the Bankruptcy Code up to the full amount of the Stalking Horse Purchaser's secured claims against the Debtors (whether arising from the DIP Facility or, to the extent it is acquired by the DIP Lenders prior to Closing, the Prepetition Senior Term Facility).

Order (as defined below) that the bid procedures approved thereunder provide for an initial overbid amount equal to not less than: (i) an amount equal to (x) the Cash Consideration, the DIP Credit Bid and Release (and the Prepetition Credit Bid Release, if any), and (y) cash consideration in an amount equal to the Break Up Fee and Expense Reimbursement, plus (ii) \$250,000 in cash, and minimum bid increments thereafter of \$250,000 (the “Overbid Protections,” and together with the Break Up Fee and the Expense Reimbursement, the “Bid Protections”).

16. The Debtors, in the exercise of their business judgment, believe that the Bid Protections are market, a necessary inducement for the Stalking Horse Purchaser, will establish a “floor” for the sale of the Assets, and ultimately encourage competitive bidding and realization of the highest value for the Assets.

*i. Local Rule 6004-1(b)(iv) Disclosures With Respect to Sale of Assets*

17. Negotiations with the Stalking Horse Purchaser regarding the terms and conditions of the Stalking Horse Agreement were conducted at arm’s length and in good faith, with both parties represented by separate counsel. A summary of certain principal terms of the Stalking Horse Agreement, including the terms required to be highlighted under Local Rule 6004-1(b)(iv), is as follows:<sup>6</sup>

Sellers/Debtors	Xtera Communications, Inc. as Seller, and Seller’s controlled affiliates, including: Xtera Communications, Ltd., Xtera Communications Canada, Ltd., Xtera Comunicacoes Do Brasil LTDA, Xtera Communications Hong Kong Ltd., PMX Holdings, Ltd, Azea Networks, Inc., Neovus, Inc., and Xtera Asia Holdings, LLC
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<sup>6</sup> This summary contains a description of only certain principal terms of the Stalking Horse Agreement. The Stalking Horse Agreement itself should be consulted for a full description of the terms thereof. To the extent that there are any inconsistencies between the terms set forth herein and in the actual terms set forth in the Stalking Horse Agreement, the terms of the Stalking Horse Agreement shall control.



Purchaser	H.I.G. Europe – Neptune, Ltd.
Amount and Form of Consideration	<p>At the Closing, Purchaser shall pay, or shall cause to be paid, to Seller the following aggregate consideration for the purchase of the Transferred Assets, subject to adjustment in accordance with the proviso in Section 2.3(a)(iv) of the Stalking Horse Agreement (the “<u>Purchase Price</u>”):</p> <p>(a) the reduction in an amount equal to \$[●] of the aggregate amount outstanding (or, if the aggregate amount outstanding is less, than the entirety of that aggregate amount) under the DIP Financing Agreement with respect to which Seller and the guarantors under the DIP Financing Agreement are joint and several obligors in full and final satisfaction of the obligations under the DIP Financing Agreement (the “<u>DIP Credit Bid and Release</u>”); and</p> <p>(b) an amount of cash equal to \$10,000,000 minus the aggregate amount outstanding under the DIP Financing Agreement on the Closing Date, but in no event to exceed \$2,600,000 (the “<u>Cash Consideration</u>”);</p> <p><i>provided, however, that, subject to the Bid Procedures Order and applicable law, if the Stalking Horse Purchaser acquires and assumes the Prepetition Loan Agreement at any time prior to Closing, the Stalking Horse Purchaser may reduce the amount of the aggregate amount outstanding under the Prepetition Loan Agreement with respect to which Seller and the other borrowers and guarantors under the Prepetition Loan Agreement are joint and several obligors pursuant to Section 363(k) of the Bankruptcy Code (any such reduction in the amount of the aggregate amount outstanding, the “<u>Prepetition Credit Bid and Release</u>”). The Stalking Horse Purchaser and Seller acknowledge and agree that the amount of the obligations under the Prepetition Loan Agreement not included in any Prepetition Credit Bid and Release shall continue to be a secured Claim in the Bankruptcy Case with respect to all other parties to the Prepetition Loan Agreement.</i></p> <p>The Stalking Horse Bidder shall have the right to credit bid up to the full amount of the obligations under the DIP Financing, if any, in any sale of any of the Assets, whether pursuant to section 363 or section 1129 of the</p>

	Bankruptcy Code.
Bid Protections	<p>The Stalking Horse Purchaser shall be entitled to:</p> <p>(c) payment of the Break Up Fee in the amount of three and a half percent (3.5%) of the Purchase Price under the Stalking Horse Agreement if the Debtors enter into an Alternative Transaction; and</p> <p>(d) the Expense Reimbursement in an amount not to exceed \$500,000.</p> <p>In addition, the Bid Procedures Order shall provide for the Overbid Protections.</p> <p>The Bid Protections shall be due promptly following the termination of the Stalking Horse Agreement.</p>
Assets	The Stalking Horse Purchaser shall purchase substantially all of the Debtors' Assets (exclusive of the Excluded Assets described below and in the Stalking Horse Agreement).
Excluded Assets	<p>The Stalking Horse Purchaser shall not purchase or acquire the following assets of the Debtors (the "<u>Excluded Assets</u>"): </p> <p>(a) all accounts, notes receivable and similar rights to receive payments of Seller or any of the Seller Affiliates prior to the Closing Date, other than the Transferred Receivables;</p> <p>(b) any shares of capital stock or other equity interests of any Affiliate of Seller or any of the Seller Affiliates;</p> <p>(c) all Seller Benefit Plans (including any trusts, insurance policies, contracts and administrative service agreements related thereto) and related assets;</p> <p>(d) all records prepared in connection with the sale of the Business (or any portion thereof), including bids received from third persons and analyses relating to the sale of the Business (or any portion thereof); provided, however, that any such records shall be made available to Purchaser in accordance with Sections 6.2 and 10.1(c) of the Stalking Horse</p>

	<p>Agreement;</p> <p>(e) all personnel records to the extent transfer is not permitted by Law or not relating to Transferred Employees; and</p> <p>(f) claims against third parties including Avoidance Actions.</p>
<p>Good Faith Deposit (Local Rule 6004-1(b)(iv)(F))</p>	<p>The Stalking Horse Agreement does not require the Stalking Horse Purchaser to remit a good faith deposit. The Stalking Horse Purchaser is providing the DIP Facility.</p>
<p>Assumed Liabilities</p>	<p>Upon the terms and subject to the conditions of the Stalking Horse Agreement, Purchaser shall, or shall cause the Purchaser Designees to, assume, effective as of the Closing, and shall, or shall cause the Purchaser Designees to, pay, perform and discharge when due, only the following obligations, liabilities and commitments (collectively, the “<u>Assumed Liabilities</u>”):</p> <p>(a) all accounts payable of Seller or any of the Seller Affiliates set forth in Section 17(a) of the Disclosure Schedule;</p> <p>(b) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates set forth in Section 17(b) of the Disclosure Schedule;</p> <p>(c) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates under the Transferred Contracts and the Transferred Permits to the extent such obligations, liabilities and commitments relate to the period from and after the Closing Date, but excluding any obligations, liabilities or commitments arising out of or relating to any breach or default or violation by Seller of any such Transferred Contract or Transferred Permit;</p> <p>(d) all Taxes arising out of, relating to or in respect of the Business or Transferred Assets for Post-Closing Tax Periods;</p> <p>(e) all obligations, liabilities and commitments accruing, arising out of or relating to the use or ownership of the Transferred Assets or the operation or conduct of</p>

	<p>the Business, in each case after the Closing; and</p> <p>(f) Cure Costs to be paid pursuant to Section 2.4 of the Stalking Horse Agreement, <i>provided, however</i>, that if the aggregate amount of Cure Costs exceeds \$150,000, the Purchase Price shall be reduced in an amount equal to the aggregate amount of the Cure Costs in excess of \$150,000, to be applied in a manner determined by the Purchaser in its sole discretion.</p>
Excluded Liabilities	<p>Notwithstanding any other provision of the Stalking Horse Agreement, Purchaser and the Purchaser Designees shall not assume or be liable for any of the following obligations, liabilities or commitments, each of which will be retained and paid, performed and discharged when due by Seller (collectively, the “<u>Excluded Liabilities</u>”):</p> <p>(a) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates not listed in Section 2.3(a) of the Stalking Horse Agreement;</p> <p>(b) all accounts payable of Seller or any of the Seller Affiliates on the Closing Date arising out of the operation or conduct of the Business before the Closing Date that are not set forth in Section 2.3(a)(i) of the Disclosure Schedule;</p> <p>(c) Excluded Taxes;</p> <p>(d) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates relating to or arising out of the Excluded Assets;</p> <p>(e) except for the obligations, liabilities and commitments expressly assumed by Purchaser under Section 6.2 of the Stalking Horse Agreement, all obligations, liabilities and commitments with respect to employment, termination of employment, compensation or employee benefits of any nature (including benefits to be provided under the Seller Benefit Plans) owed to any Business Employee, Former Employee, consultant or independent contractor (or any dependent or beneficiary of the foregoing), whether or not any such individual becomes a Transferred Employee or otherwise enters into employment or other service with Purchaser or</p>

	<p>its Affiliates at or after Closing, and that arises out of or relates to the employment or service provider relationship between Seller or its Affiliates and any such individual or the termination of such relationship;</p> <p>(f) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates relating to or arising out of any Proceeding pending as of or prior to the Closing or which arises out of or relates to the operation or conduct of the Business or the Transferred Assets by Seller or its Affiliates prior to the Closing Date;</p> <p>(g) all obligations, liabilities and commitments under Environmental Laws to the extent arising out of the operation or conduct of the Business or the use or operation of the Transferred Assets, in each case on or prior to the Closing Date;</p> <p>(h) all Indebtedness of Seller or any of its Affiliates; and</p> <p>(i) except for obligations, liabilities and commitments that are expressly Assumed Liabilities, all obligations, liabilities and commitments of any entity not incorporated under the laws of a state or subdivision of the United States.</p>
<p>Representations, Warranties, and Covenants</p>	<p>The Stalking Horse Agreement contains usual and customary representations, warranties, and covenants for similar bankruptcy section 363 sale transactions, including representations and warranties by the Stalking Horse Purchaser that it has the requisite authority and has obtained the necessary consents to consummate the transactions contemplated by the Stalking Horse Agreement.</p>
<p>Regulatory Approvals</p>	<p>After the Closing, each party shall take such further actions and execute such further documents as may be reasonably necessary or reasonably requested by the other party (including with respect to information held by Seller and its agents in respect of regulatory filings for Transferred Intellectual Property) in order to effectuate the intent of the Stalking Horse Agreement and to provide such other party in all material respects with the intended benefits of the Stalking Horse Agreement and the Ancillary Agreements.</p>

<p>Conditions to Closing (Local Rule 6004- 1(b)(iv)(E))</p>	<p><b><u>Conditions to Obligations of Purchaser.</u></b> The obligation of Purchaser to purchase and pay for the Transferred Assets and assume the Assumed Liabilities is subject to the satisfaction (or waiver in writing by Purchaser) on or prior to the Closing Date of the following conditions:</p> <p>(a) <b>Representations and Warranties:</b> (i) The Specified Representations of Seller shall be true and correct as of the date of the Stalking Horse Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), and (ii) all other representations and warranties of Seller in the Stalking Horse Agreement shall be true and correct as of the date of the Stalking Horse Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), except in the case of clause (ii) for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and would not reasonably be expected to have a Business Material Adverse Effect.</p> <p>(b) <b>Performance of Obligations of Seller:</b> Seller shall have performed or complied in all material respects with all obligations and covenants required by the Stalking Horse Agreement to be performed or complied with by Seller by the time of the Closing. Purchaser shall have received a certificate dated as of the Closing Date signed by an authorized officer of Seller as to the satisfaction of the foregoing condition.</p> <p>(c) <b>No Injunctions or Restraints:</b> No applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect and no Proceeding initiated by a Governmental Entity shall be pending seeking any of the same.</p>
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	<p>(d) <b>Ancillary Agreements:</b> Seller or the applicable Seller Affiliate shall have duly executed and delivered the Ancillary Agreements.</p> <p>(e) <b>No Business Material Adverse Effect:</b> During the period from the date of the Stalking Horse Agreement until the Closing, no event shall have occurred that has had or could reasonably be expected to have, individually or in the aggregate, a Business Material Adverse Effect.</p> <p>(f) <b>Bid Procedures and Sale Orders:</b> The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order in form and substance acceptable to Purchaser and that such Orders shall be Final Orders.</p> <p>(g) <b>Required Consents:</b> Seller shall have delivered to Purchaser the consents set forth in Section 17(g) of the Disclosure Schedule (the “<u>Required Consents</u>”), in each case in form and substance reasonably satisfactory to Purchaser.</p> <p>(h) <b>Key Employees:</b> The Business Employees set forth in Section 17(h) of the Disclosure Schedule shall have accepted offers of employment by Purchaser or one of the Purchaser Designees.<sup>7</sup></p> <p>(i) <b>Intellectual Property:</b> (A) The Transferred Intellectual Property shall be valid, subsisting, enforceable and otherwise in good standing, (B) no Transferred Intellectual Property shall be involved in any interference, reissue, reexamination, review, opposition or cancellation proceeding, and no action is or has been threatened with respect to the Transferred Intellectual Property, and (C) Seller shall have maintained and protected the Transferred Intellectual Property and Transferred Technology, and shall not have granted any person a license in respect of any Transferred Intellectual Property or Transferred Technology.</p> <p>(j) <b>DIP Representations and Warranties:</b> All</p>
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<sup>7</sup> The Stalking Horse Bidder has consulted with certain of the Debtors’ management in connection with preparing the Stalking Horse Bid.

representations and warranties in the DIP Financing Agreement shall be, as of the Closing Date as though made on the Closing Date, true and correct in all material respects and the Borrowers shall have performed or complied in all material respects with all obligations and covenants required by the DIP Financing Agreement to be performed or complied with by the Borrowers by the time of the Closing.

**Conditions to Obligations of Seller.** The obligation of Seller to, or to cause the Seller Affiliates to, sell, transfer, assign and deliver the Transferred Assets is subject to the satisfaction (or waiver by Seller) on or prior to the Closing Date of the following conditions:

- (a) **Representations and Warranties:** (i) The Specified Representations of Purchaser shall be true and correct as of the date of the Stalking Horse Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), and (ii) all other representations and warranties of Purchaser in the Stalking Horse Agreement shall be true and correct as of the date of the Stalking Horse Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), except in the case of clause (ii) for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and would not reasonably be expected to have a Purchaser Material Adverse Effect.
- (b) **Performance of Obligations of Purchaser:** Purchaser shall have performed or complied in all material respects with all obligations and covenants required by the Stalking Horse Agreement to be performed or complied with by Purchaser by the time of the Closing. Seller shall have received a certificate dated as of the Closing Date signed by an authorized officer of Purchaser as to the satisfaction of the



	<p>foregoing condition.</p> <p>(c) <b>No Injunctions or Restraints:</b> No applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect and no proceeding initiated by a Governmental Entity shall be pending seeking any of the same.</p> <p>(d) <b>Bid Procedures and Sale Orders:</b> The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order and such Orders shall not have been reversed, vacated or stayed.</p>
<p>As Is, Where Is</p>	<p>The sale of the Debtor’s assets is “as is, where is,” without representation or warranty other than those representations and warranties expressly set forth in the Stalking Horse Agreement.</p>
<p>Other Highlighted Terms Under Local Rule 6004-1(b)(iv)</p>	<ul style="list-style-type: none"> <li>▪ <u>Local Rule 6004-1(b)(iv)(A)</u>. The proposed sale is not to an insider within the meaning of section 101(31) of the Bankruptcy Code.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(B)</u>. The Stalking Horse Agreement contemplates the transfer of the Transferred Employees and that certain key Business Employees set forth on Section 8.1(h) of the Disclosure Schedule shall have accepted offers of employment by the Purchaser or one of the Purchaser Designees.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(C)</u>. There are no releases or discharge provisions in favor of the Stalking Horse Purchaser in the Stalking Horse Agreement.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(D)</u>. As discussed in more detail below, an auction is contemplated. The Stalking Horse Agreement provides that the Debtors shall not solicit competing offers for the Assets until after the Petition Date.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(E)</u>. Pursuant to the terms of the DIP Facility, Closing of the Sale under the Stalking Horse Agreement must occur on or before ninety (90) days following the Petition Date.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(F)</u>. No good faith deposit is contemplated under the Stalking Horse Agreement.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ <u>Local Rule 6004-1(b)(iv)(G)</u>. The Debtors are not entering into a transition services agreement with the Stalking Horse Purchaser if the latter is the selected as the ultimate purchaser of the Assets.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(H)</u>. The Debtors are not seeking to release sale proceeds on or after the Closing without further Court order.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(I)</u>. The Debtors are seeking to have the sale declared exempt from bulk sales or similar laws, but only to the greatest extent permissible under applicable law.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(J)</u>. The Stalking Horse Purchaser is purchasing, as part of the Assets, the books and records of the Debtors that relate to the Assets. The Debtors are permitted to retain copies of certain books and records, as set forth in Section 11.3 of the Stalking Horse Agreement.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(K)</u>. The Stalking Horse Purchaser is purchasing Avoidance Actions as part of the Assets to be acquired under the Stalking Horse Agreement.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(L)</u>. The Debtors are seeking to sell the Assets free and clear of successor liability claims, other than Permitted Liens.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(M)</u>. The Debtors are seeking to sell the Assets free and clear of liens, claims, and interests, other than Permitted Liens, to the fullest extent permitted under section 363 of the Bankruptcy Code, but are not seeking to sell property free and clear of any possessory leasehold interest or license.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(N)</u>. The Debtors are not seeking to disallow or restrict any party's right to credit bid its allowed secured claim under section 363(k) of the Bankruptcy Code.</li> <li>▪ <u>Local Rule 6004-1(b)(iv)(O)</u>. As discussed in more detail below, the Debtors are seeking relief from the fourteen-day stays imposed by Bankruptcy Rule 6004(h) and 6006(d).</li> </ul>
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18. The Debtors believe that the sale of the Assets pursuant to the procedures and on the timeline proposed herein presents the best opportunity to maximize the value of the Assets for all interested parties.

### **BIDDING PROCEDURES**<sup>8</sup>

19. In addition, with respect to Local Rule 6004-1(c)(i)(A)-(C), the proposed bidding procedures (the “Bidding Procedures”)<sup>9</sup> to be approved through the proposed Bidding Procedures Order provide:

Local Rule 6004-1(c)(i)(A)(1)	Potential Bidders must deliver all relevant information, including financial information, on or before the Bid Deadline (as defined below).
Local Rule 6004-1(c)(i)(A)(2)	Potential Bidders’ Bids must contain written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors, in consultation with the Creditors’ Committee, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement.
Local Rule 6004-1(c)(i)(A)(3)	Potential Bidders must execute a confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, which shall inure to the benefit of any purchaser of the Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.
Local Rule 6004-1(c)(i)(A)(4)	Potential Bidders must provide a statement that they offer to purchase any or all of the Assets in cash.

<sup>8</sup> This summary disclosure contains a description of only certain terms of the Bidding Procedures. A copy of the Bidding Procedures is attached to the Bidding Procedures Order as *Exhibit 1*. The Bidding Procedures themselves should be consulted for a full description of the terms thereof. To the extent that there are any inconsistencies between the terms set forth herein and in the actual terms set forth in the Bidding Procedures, the Bidding Procedures shall control.

<sup>9</sup> Capitalized terms not otherwise defined in this section shall have the meanings ascribed to such terms in the Bidding Procedures.

Local Rule 6004-1(c)(i)(B)(1)	The deadline for Potential Bidders to deliver a Bid to be considered as a Qualified Bid shall be the date set forth in the Bidding Procedures Order by 5:00 p.m. (prevailing Eastern Time).
Local Rule 6004-1(c)(i)(B)(2)	<p>Potential Bidders must deliver an executed copy of a purchase or agreement (a "<u>Purchase Agreement</u>"), including the purchase price for the Assets expressed in U.S. Dollars (the "<u>Purchase Price</u>"), together with all exhibits and schedules thereto, together with copies marked ("<u>Marked Agreement</u>") to show any amendments and modifications to the Stalking Horse Agreement or the Stalking Horse Agreement, as applicable, and the proposed order to approve the sale by the Bankruptcy Court.</p> <p>Potential Bidders may bid on all or some of the Assets.</p> <p>Potential Bidders must include a signed writing confirming that their respective offers are irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as (i) the Successful Bidder, then the offer shall remain irrevocable until the earlier of (A) the date the Sale Order is entered if the sale transaction with such Successful Bidder is denied and (B) the date that is seventy-five (75) days after the Sale Hearing, or (ii) the Back-Up Bidder, then the offer shall remain irrevocable until the earlier of (A) the date of closing of the transaction with the Successful Bidder and (B) the date that is ninety (90) days after the Sale Hearing.</p> <p>Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder.</p>
Local Rule 6004-1(c)(i)(B)(3)	Bids must be accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount

	equal to ten (10%) of the Purchase Price.
Local Rule 6004-1(c)(i)(B)(4)	<p>In addition to the foregoing, Potential Bidders must include the following in their respective Bids: (i) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid; (ii) written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors, in consultation with the Creditors' Committee (if any), to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; (iii) it contains an irrevocable commitment to (a) fund the Debtors from conclusion of the Auction through Closing and (b) make payment to the Debtors' prepetition and post-petition lender (as applicable) of all allowed claims due under the credit agreements with such lender that are secured by valid, perfected liens against the assets being sold; (iv) an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid; (v) evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Creditors' Committee, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement; (vi) a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors; and (vii) such other information reasonably requested by the Debtors.</p>

Local Rule 6004-1(c)(i)(C)(1)	The Stalking Horse Agreement contains “no-solicitation” limitations from the date of execution of the Stalking Horse Agreement through the Petition Date.
Local Rule 6004-1(c)(i)(C)(2)	The Stalking Horse Agreement provides that the Stalking Horse Purchaser will receive the Break Up Fee and the Expense Reimbursement in the event an Alternative Transaction is consummated or the Stalking Horse Agreement is terminated.
Local Rule 6004-1(c)(i)(C)(3)	<p>The initial overbid shall be (a) an amount equal to (i) the Cash Consideration, the DIP Credit Bid and Release and the Prepetition Credit Bid and Release, if any, and (ii) cash consideration in an amount equal to the Break Up Fee and Expense Reimbursement, plus (b) \$250,000 in cash.</p> <p>The minimum bid increments for each subsequent bid shall be \$250,000.</p>
Local Rule 6004-1(c)(i)(C)(4)	The initial overbid increment with respect to the Assets shall be in an amount sufficient to satisfy the Break Up Fee and Expense Reimbursement in the event an Alternative Transaction is consummated.

### **RELIEF REQUESTED**

20. First, the Debtors request entry of the Bidding Procedures Order, substantially in the form attached hereto as Exhibit B: (a) approving Bidding Procedures for (i) submitting bids for any or all of the Assets, and (ii) conducting an auction (the “Auction”) with respect to the Assets in the event the Debtors receive at least one bid in addition to that submitted by the Stalking Horse Purchaser; (b) scheduling the Auction for a date to be set by the Bidding Procedures Order at 10:00 a.m. (prevailing Eastern Time) at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, or at such other place, date and time as may be designated by the Debtors; (c) scheduling a hearing to approve any sale of Assets with respect to any bid(s) accepted by the Debtors on or before the date set forth in the Bidding Procedures Order (the “Sale Hearing”); (d) approving procedures (the

“Assumption and Assignment Procedures”), as set forth below, for the assumption and assignment of certain executory contracts (the “Contracts”) and unexpired leases (the “Leases”) of the Debtors to any purchaser(s) of the Assets, and to resolve any objections thereto; and (e) approving the form of notice of the Auction and Sale (the “Sale Notice”), attached to the Bidding Procedures Order as *Exhibit 3*, to be served on the Sale Notice Parties (as defined below).

21. Second, the Debtors request entry of a Sale Order, in substantially the form to be filed with the Court by the Debtors prior to the Bid Deadline (as defined below), pursuant to sections 105, 363, and 365 of the Bankruptcy Code (i) approving the Sale of the Assets to the Purchaser, free and clear of all liens, claims, encumbrances and liabilities, except as provided in the Purchase Agreement, (ii) authorizing and approving the assumption and assignment of Contracts and Leases to the purchaser or purchasers (each, a “Purchaser”); and (iii) authorizing the Debtors to consummate the Sale and all documents, agreements and contracts executed in conjunction therewith.

## **PROPOSED BID AND SALE PROCEDURES**

### **Summary of Proposed Bidding Procedures**<sup>10</sup>

22. Except as otherwise provided in the Purchase Agreement, all of the Debtors’ rights, title and interest in all of the Assets shall be sold free and clear of any liens, security interests, claims, charges or encumbrances in accordance with section 363 of the Bankruptcy Code. The Debtors propose that any such liens, security interests, claims, charges or encumbrances shall attach to any amounts payable to the Debtors’ estates resulting from the Sale, net of any transaction costs and fees (the “Sale Proceeds”), in the same order of priority

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<sup>10</sup> For the convenience of parties in interest, a chart listing important proposed dates is attached to the Bidding Procedures Order as *Exhibit 2*.

and subject to the rights, claims, defenses, and objections, if any, of all parties with respect thereto, subject to any further order of the Court.

23. In order to ensure that the Debtors receive the maximum value for the Assets, the Stalking Horse Agreement is subject to higher or better offers as set forth therein and herein, and, as such, the Stalking Horse Agreement will serve as the “stalking horse” bid for the Assets.

**A. Provisions Governing Qualifications of Bidders.**

24. Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (as defined below), each person (other than the Stalking Horse Purchaser), who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (as defined below):

- (a) a written disclosure of the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid; and
- (b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

25. A Potential Bidder that delivers the documents and information described above and that the Debtors determine in their reasonable business judgment, after consultation with their advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a “Qualified Bidder.” The Debtors will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

26. As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtors will determine and will notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.



**B. Due Diligence.**

27. The Debtors will afford any Qualified Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deems appropriate, in their reasonable discretion. The due diligence period shall extend through and include the Auction date; provided, however, that any Qualified Bid (as defined below) submitted shall be irrevocable until the selection of the Successful Bidder (defined below), except as otherwise set forth in the Stalking Horse Agreement with respect to the Stalking Horse Purchaser.

**C. Provisions Governing Qualified Bids.**

28. A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):

- (a) it states that the applicable Qualified Bidder offers to purchase any or all of the Assets;
- (b) it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as (i) the Successful Bidder, then the offer shall remain irrevocable until the earlier of (A) the date the Sale Order is entered if the sale transaction with such Successful Bidder is denied and (B) the date that is thirty (30) days after the Sale Hearing, or (ii) the Back-Up Bidder, then the offer shall remain irrevocable until the earlier of (A) the date of closing of the transaction with the Successful Bidder and (B) the date that is sixty (60) days after the Sale Hearing;<sup>11</sup>
- (c) confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (d) it sets forth each governmental, regulatory, and other third-party approval required for the Qualified Bidder to consummate the transaction, including in connection with the assignment of any executory contracts and

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<sup>11</sup> Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder.

unexpired leases, and the time period within which the Qualified Bidder expects to receive such approvals;

- (e) it includes a duly authorized and executed copy of a purchase or agreement (a “Purchase Agreement”), including the purchase price for the Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto, together with copies marked (“Marked Agreement”) to show any amendments and modifications to the Stalking Horse Agreement, and the proposed order to approve the sale by the Bankruptcy Court;
- (f) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors, in consultation with the Creditors’ Committee, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- (g) it must have a value to the Debtors, in the Debtors’ exercise of their reasonable business judgment, after consultation with their advisors, the Committee and its advisors, the DIP Agent and the DIP Lender and its advisors, and that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus \$250,000 (the “Initial Overbid”);<sup>12</sup>
- (h) in the case of a bid that incorporates a credit bid, it must contain a cash component sufficient to satisfy in full all senior liens on the collateral subject to the credit bid;
- (i) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;
- (j) it contains an irrevocable commitment to (i) fund the Debtors from conclusion of the Auction through Closing and (ii) make payment to the Debtors’ prepetition and post-petition lenders, including H.I.G. European Capital Partners LLP, as applicable of all allowed claims due under the credit agreements with such lender that are secured by valid, perfected liens against the assets being sold;;

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<sup>12</sup> The initial overbid shall be (a) an amount equal to (i) the Cash Consideration, the DIP Credit Bid and Release and the Prepetition Credit Bid Release (if any), and (ii) cash consideration in an amount equal to the Break Up Fee and Expense Reimbursement, plus (b) \$250,000 in cash.

- (k) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- (l) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;
- (m) it includes evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Creditors' Committee, the DIP Agent and the DIP Lender, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement;
- (n) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the Purchase Price;
- (o) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
- (p) it contains such other information reasonably requested by the Debtors; and
- (q) it is received prior to the Bid Deadline.
- (r) it states that the applicable Qualified Bidder offers to purchase any or all of the Assets in cash;
- (s) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as (i) the Successful Bidder, then the offer shall remain irrevocable until the earlier of (A) the date the Sale Order is entered if the sale transaction with such Successful Bidder is denied and (B) the date that is thirty (30) days after the Sale Hearing, or (ii) the Back-Up Bidder, then the offer shall remain

irrevocable until the earlier of (A) the date of closing of the transaction with the Successful Bidder and (B) the date that is sixty (60) days after the Sale Hearing;<sup>13</sup>

- (t) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (u) it sets forth each governmental, regulatory, and other third-party approval required for the Qualified Bidder to consummate the transaction, including in connection with the assignment of any executory contracts and unexpired leases, and the time period within which the Qualified Bidder expects to receive such approvals;
- (v) it includes a duly authorized and executed copy of a purchase or agreement (a "Purchase Agreement"), including the purchase price for the Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked ("Marked Agreement") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court;
- (w) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- (x) if the bid is for all or substantially all of the Assets, it must have a value to the Debtors, in the Debtors' exercise of their reasonable business judgment, after consultation with their advisors, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, as applicable, and \$250,000 (the "Initial Overbid");
- (y) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;
- (z) it contains an irrevocable commitment to make payment to the Debtors' prepetition and postpetition lender of all amounts due under the credit agreements with such lender;

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<sup>13</sup> Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder.

- (aa) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- (bb) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;
- (cc) it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement;
- (dd) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the Purchase Price;
- (ee) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
- (ff) it contains such other information reasonably requested by the Debtors; and
- (gg) it is received prior to the Bid Deadline (as defined below).

29. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the bidding process, the Auction, and the Sale. The Stalking Horse Purchaser shall each provide the Debtors with the dollar amount of its respective Qualified Bid (credit bid amount) prior to the Sale Hearing.

30. The Debtors shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline (as defined below).

**D. Bid Deadline.**

31. A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) proposed counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. (Thomas.Califano@dlapiper.com); and DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. (Stuart.Brown@dlapiper.com), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. (daniel.guyder@allenoverly.com); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller (cmiller@MNAT.com); (iv) counsel to Wilmington Trust, N.A. as administrative and collateral agent under the DIP Facility, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith (michael.messersmith@kayescholer.com) and Seth J. Kleinman (seth.kleinman@kayescholer.com); and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin (mailto:lplotkin@lsl-la.com) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr.

(chipman@chipmanbrown.com), so as to be received by no later than the Bid Deadline established under the Bidding Procedures Order.

**E. Credit Bidding.**

32. The Stalking Horse Purchaser holds a first priority a security interest in the Assets and its proposed purchase price consists of a credit bid and/or assumption of debt for the Assets. The Stalking Horse Purchaser may submit additional credit bids for the Assets, pursuant to section 363(k) of the Bankruptcy Code as it deems necessary and desirable. In addition to the Stalking Horse Purchaser, other secured creditors holding allowed secured claims against the Debtor shall have the right, subject to the provisions of the Bankruptcy Code, applicable law, and any agreements between secured creditors, to credit bid all or any portion of such claims. In addition to the other requirements of an Initial Overbid, any credit bid made by a party other than the Stalking Horse Purchaser must include a cash component (or otherwise provide cash) sufficient to satisfy all liens senior to the liens of party making the credit bid on the collateral that is subject to the credit bid unless such senior lienholder(s) shall otherwise consent in writing prior to the Auction.

**F. Evaluation of Competing Bids.**

33. A Qualified Bid will be valued by the Debtors based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the form of Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtors in their reasonable discretion.

**G. No Qualified Bids.**

34. If the Debtors do not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Assets.

**H. Auction Process.**

35. If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct the Auction with respect to the Assets, which shall be transcribed, on the date set forth in the Bidding Procedures Order at 10:00 a.m. (prevailing Eastern Time), at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

- (a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, and the Creditors' Committee and their respective advisors may attend the Auction;
- (b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;
- (c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- (d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtors believe in their reasonable discretion is the highest or otherwise best offer (the "Starting Bid") to all Qualified Bidders;



- (e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- (f) the Debtors, after consultation with their advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and
- (g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a “Subsequent Bid”) providing a net value to the estate of at least an additional \$250,000 with respect to the Assets, above the prior bid (the “Overbid Increments”). After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that it believes to be the highest or otherwise better offer (the “Leading Bid”). Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtors will give effect to any liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors.

#### **I. Selection of Successful Bid.**

36. Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Creditors’ Committee and its advisors, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors, after consultation with the Creditors’ Committee, at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

37. Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) days after adjournment of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

38. The Debtors will sell the Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

**J. Return of Deposits.**

39. Deposits, to the extent applicable, shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

**K. Back-Up Bidder.**

40. If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtors in the exercise of their business judgment, at the Auction shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until the earlier of a closing of a sale transaction with the Successful Bidder and the date that is sixty (60) days after the Sale Hearing. If the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court.<sup>14</sup>

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<sup>14</sup> Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate  
[Footnote continued on next page]

**L. Sale Hearing.**

41. The Debtors will seek entry of an order from the Court at the Sale Hearing to begin on or before the date set forth in the Bidding Procedures Order, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures.

**Notice of Sale Hearing**

42. As stated above, the Debtors request that this Court schedule the Sale Hearing. The Debtors propose that any objections to the Sales be filed by 4:00 p.m. (prevailing Eastern Time) on the date set forth in the Bidding Procedures Order (the "Sale Objection Deadline").

43. The Debtors also request that the Court approve the form of the Sale Notice, substantially in the form of *Exhibit 3* to the Bidding Procedures Order. The Debtors will serve a copy of the Sale Notice on the following parties: (a) the U.S. Trustee; (b) the Creditors' Committee; (c) any parties requesting notices in these cases pursuant to Bankruptcy Rule 2002; (d) counsel to the Stalking Horse Purchaser; (e) the Stalking Horse Purchaser; (f) the United States Attorney's Office and any Attorneys General for the District of Delaware, and Texas and any other states where the Debtors conduct business; (g) the Internal Revenue Service and other applicable taxing authorities; (h) all known parties that may be asserting a lien against any of the Assets; (i) counterparties to Contracts and Leases; and (j) all Potential Bidders (collectively with the parties specified in this paragraph, the "Sale Notice Parties").

44. The Debtors propose to serve the Sale Notice within two (2) business days following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Sale Notice Parties. The Sale Notice provides that any party that has not received a copy of the

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the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder.

Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Jamila J. Willis, or by emailing jamila.willis@dlapiper.com.

45. The Debtors submit that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction, and Sale, and Sale Hearing to the Debtors' creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Assets. Based on the foregoing, the Debtors respectfully request that this Court approve these proposed notice procedures.

#### **Sale Hearing**

46. At the Sale Hearing, the Debtors will seek Court approval of the Sale to the Successful Bidder, free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, with all liens, claims and encumbrances to attach to the Sale Proceeds with the same validity and in the same order of priority as they attached to the Assets prior to the Sales, including the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts (as defined below) pursuant to section 365 of the Bankruptcy Code. The Debtors will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable and in the best interest of the Debtors' estates and all interested parties.

#### **Procedures for the Assumption and Assignment of Assigned Contracts and Leases**

47. As noted above, the Debtors will seek to assume and assign certain Contracts, Leases, and licenses of intellectual property (the "Pre-Petition Licenses") to be identified on schedules to the Purchase Agreement other than those agreements excluded by the Successful

Bidder pursuant to such bidder's Purchase Agreement (collectively, the "Assumed Executory Contracts").

48. At least initially, the Assumed Executory Contracts will be those Contracts and Leases so designated by the Stalking Horse. The Successful Bidder may choose to exclude (or to add) certain Contracts, Leases, or Pre-Petition Licenses to the list of Assumed Executory Contracts, subject to further notice.

49. In the interim, the Debtors will serve the Cure Notice, substantially in the form of *Exhibit 4* to the Bidding Procedures Order, upon each counterparty to all Assumed Executory Contracts by no later than the date that is five (5) business days after entry of the Bidding Procedures Order. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts"). To the extent there is a contract added to the list of contracts to be assumed by the Successful Bidder pursuant to the Successful Bidder's Purchase Agreement selected at the Auction, this Motion constitutes a separate motion to assume and assign that contract to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be listed on an exhibit to the Successful Bidder's Purchase Agreement, and will be given a separate Cure Notice.

50. If a Contract or Lease is assumed and assigned pursuant to Court Order, then unless the Assumed Executory Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice, the Assumed Executory Contract counterparty

will receive at the time of the Closing of the Sale (or as soon as reasonably practicable thereafter or as otherwise agreed), the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract, the Debtors propose that such objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtors in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

51. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (a “Assumption Objection”), including with respect to the ability of the Stalking Horse Purchaser to provide adequate assurance of future performance under the Assumed Executory Contract, the Debtors propose that the counterparty must file the objection by no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days after the date of service of the Cure Notice (the “Assumption Objection Deadline”); provided, however, that any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the ability of a Successful Bidder other than the Stalking Horse Purchaser to provide adequate assurance of future performance under the Assumed Executory Contract. After receipt of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtors and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Debtors shall segregate any disputed Cure Amounts pending the resolution of any such Cure Amount disputes by the Court or mutual agreement of the parties, unless the

Successful Bidder (whether the Stalking Horse Purchaser or other person) instead elects to reject the related contract or lease. The pendency of a dispute relating to the Cure Amount will not prevent or delay the assumption and assignment of any Assumed Executory Contract or the sale of the Assets to the Successful Bidder.

52. In addition, parties to Pre-Petition Licenses that wish to retain rights under section 365(n)(1)(B) of the Bankruptcy Code must file a notice in these Chapter 11 Cases to retain such rights (a “Notice of Election”) on or prior to the date set forth in the *Notice Of Deadline To Make Election To Retain Rights Under Section 365(n) of the Bankruptcy Code With Respect To Agreements Pursuant To Which Xtera Communications, Inc. Leased Rights To Intellectual Property*, substantially in the form attached to the Bidding Procedures Order as *Exhibit 5*, which the Debtors will mail to the counterparties to Pre-Petition Licenses in conjunction with the Cure Notice.

53. The Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder’s Purchase Agreement. The Debtors propose that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

54. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

#### **APPLICABLE AUTHORITY**

**A. The Sales of the Assets Are Authorized by Section 363 as a Sound Exercise of the Debtors' Business Judgment.**

55. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors have determined that the Sale of the Assets by public auction will enable them to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtors' estates. In particular, the Stalking Horse Agreement is the result of comprehensive arm's length negotiations for the Sale of the Assets pursuant to the terms of the Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtors' estates than would be provided by any other existing alternative.

56. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Del. & Hudson Ry. Co.*, 124 BR. 169, 176



D. Del. 1991); *see also Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

57. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Integrated Res.*, 147 B.R. 650, 658 (Bankr. S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate, court approval of a trustee’s decision to sell should only be withheld if the trustee’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D. P.R. 1991) (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

58. Applying section 363 of the Bankruptcy Code, the proposed Sale of the Assets should be approved. As set forth above, the Debtors have determined, in the exercise of their sound business judgment, that the best method of maximizing value for the Debtors’ estates

would be through the Sale of the Assets. The fairness and reasonableness of the consideration to be paid by the purchaser(s) will be demonstrated by adequate “market exposure” and an open and fair auction process — the best means for establishing whether a fair and reasonable price is being paid. In order to ensure a fair auction process, the Debtors have up until execution of the Stalking Horse Agreement, and will continue after the Petition Date, to solicit interest from numerous potential purchasers.

59. Further, the Debtors believe that the value the Debtors’ estates—and, thus, the Debtors’ creditors—will receive for the Sale of the Assets exceeds any value the Debtors’ estates could get for the Assets if the Debtors were required to liquidate the Assets piecemeal. As assurance of value, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate “market exposure” and an open and fair auction process—the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

60. The Debtors believe that the timeline for the marketing and sale of the Assets is adequate, especially considering the marketing efforts that previously occurred with respect to the Debtors’ businesses. In addition to the Debtors’ prior efforts, since the Petition Date, the Debtors’ financial advisor has been contacting potential interested parties regarding a potential transaction. There is a limited universe of potential acquirers of the Assets, and the Debtors and their advisors have been in active discussions with most, if not all, of these potential purchasers.

**B. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Assets.**

61. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., In re Fin'l News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

62. Procedures to dispose of assets, similar to the proposed Bidding Procedures, have been approved in other bankruptcy cases.<sup>15</sup> *See, e.g., In re Velti Inc.*, Case No. 13-12878 (PJW) (Bankr. D. Del. Nov. 20, 2013); *In re Orchard Supply Hardware Stores Corp.*, Case No. 13-11565 (CSS) (Bankr. D. Del. Jul. 8, 2013); *In re Conex Holdings LLC*, Case No. 11-10501 (CSS) (Bankr. D. Del. Sept. 14, 2011); *In re Barnes Bay Dev. Ltd.*, Case No. 11-10792 (PJW) (Bankr. D. Del. May 19, 2011); *In re East West Resort Dev. V, L.P., L.L.L.P.*, Case No. 10-10452 (BLS) (Bankr. D. Del. Mar. 31, 2010); *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y. Oct. 19, 2006); *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. June 22, 2006); *In re Oxford Automotive, Inc.*, Case No. 04-74377 (Bankr. E.D. Mich. Jan. 24, 2005).

63. The Debtors believe that the Bidding Procedures will establish the parameters under which the value of the Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtors' creditors will receive

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<sup>15</sup> Because of the voluminous nature of the unreported orders cited herein, such orders are not annexed to the Motion. Copies of these orders are available upon request of Debtors' proposed counsel.

the greatest possible consideration for their assets because they will ensure a competitive and fair bidding process. They also allow the Debtors to undertake an auction in as expeditious and efficient manner as possible, which the Debtors believe is essential to maximizing the value of the Debtors' estates for their creditors.

64. The Debtors also believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtors' assets. In particular, the proposed Bidding Procedures will allow the Debtors to conduct an auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction.

65. In sum, the Debtors believe that the Bidding Procedures will encourage bidding for the Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate and within the Debtors' sound business judgment.

**C. Credit Bidding Should be Authorized.**

66. Section 363(k) of the Bankruptcy Code provides, in relevant part, that in a sale under section 363 of the Bankruptcy Code, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured, as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the total face value of its claim on its collateralized assets and does not limit the credit bid to the claim's economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006)

(explaining that “[i]t is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)”).

67. Pursuant to the Bidding Procedures, the Stalking Horse Purchaser and other holders of allowed secured claims are entitled to credit bid their respective secured claims pursuant to section 363(k) of the Bankruptcy Code. Because the secured claims are secured by the Assets, the Stalking Horse Purchaser should be permitted to credit bid up to such secured claims amount in order to purchase the Assets.

**D. The Sale of the Assets Free and Clear of Liens and Other Interests is Authorized by Sections 363(f).**

68. The Debtors further submit that it is appropriate to sell the Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the Sale Proceeds of the Assets, to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

69. This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

70. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free

and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

71. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Assets pursuant to the Purchase Agreement. In particular, the Debtors believe that at least sections 363(f)(2) will be met in connection with the transactions proposed under the Purchase Agreement because each of the parties holding liens on the Assets will consent or, absent any objection to this motion, will be deemed to have consented to the Sale. Any lienholder also will be adequately protected by having their liens, if any, in each instance against the Debtors or their estate, attach to the Sale Proceeds ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtors may possess with respect thereto. Accordingly, section 363(f) authorizes the transfer and conveyance of the Debtors’ assets free and clear of any such claims, interests, liabilities or liens.

72. Although section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests,” the term “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Sec. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir.

2000). In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” the trend in modern cases is towards “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’” *Id.* at 289 (citing 3 *Collier on Bankruptcy* 15th Ed. Rev., ¶ 363.06[1] (L. King, 15th rev. ed. 1988)). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited with approval and extensively by the Third Circuit in *Folger, supra*, the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in *Folger* stated that *Leckie* held that the Debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at 258 (citing *Leckie*, 99 F.3d at 582).

73. Courts have consistently held that a buyer of a debtor’s assets pursuant to a section 363 sale takes such assets free from successor liability resulting from pre-existing claims. *See, The Ninth Avenue Remedial Grp. v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest

permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims based on successor doctrine precluded after sale of assets free and clear); *WBO P'ship v. Virginia Dept. of Med. Assistance Servs. (In re WBO P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)). The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the Debtors' pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know that the Debtors' assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale should state that the Successful Bidder is not liable as a successor under any theory of successor liability for claims that encumber or relate to the Assets.

**E. The Proposed Notice of Bidding Procedures and Auction Is Appropriate.**

74. The Debtors believe that it will obtain the maximum recovery for creditors of the Debtors' estate if the Assets of the Debtors are sold through a well-advertised sale and auction.

75. Under Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Debtors' assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtors submit that the notice procedures herein comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtors' creditors and other interested parties, as well as to those parties who have expressed an interest, or may express an interest, in bidding on the Assets. The proposed time frame between



the filing of this Motion, the commencement of the bidding process and the Auction should provide interested purchasers ample time to participate in the Auction.

**F. The Break Up Fee and Expense Reimbursement Are Appropriate Under the Circumstances.**

76. Bid protections are normal and oftentimes necessary components of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. In particular, such protections encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *Integrated Resources*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a “white knight” to offer an initial bid by providing some form of compensation for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, “bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”); *In re Marrose Corp.*, 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. 1992) (stating that “agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citations omitted); *see also In re ALC Holdings, LLC*, Case No. 11-13853 (MFW) (Bankr. D. Del. Jan. 10, 2012) (approving expense reimbursement in favor of stalking horse purchaser that also served as administrative agent and postpetition lender).

77. Proposed bid protections should be approved when it is in the best interests of the estate. *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

78. In *Calpine Corp.* the Third Circuit found that whether breakup fees and expenses could be paid to Calpine Corp. ("Calpine") as a "stalking horse" depended on whether such fees were necessary to preserve the value of the estate. *Calphine Corp.*, 181 F.3d at 536. The court determined that Calpine's right to breakup fees and expenses depended on whether it provided a benefit to the debtor's estate by promoting competitive bidding or researching the value of the assets at issue to increase the likelihood that the selling price reflected the true value of the company. *Id.* at 537. The Debtors believe that approval of the Bid Protections will create such a competitive bidding process.

79. A proposed breakup fee should be approved so long as it is reasonable in light of a stalking horse bidder's projected efforts and, in terms of its percentage and amount, is of the same order of magnitude as breakup fees approved in other cases. The proposed Break Up Fee in this instance satisfies these criteria. *See, e.g., In re Global Home Products LLC, et al.*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (order approving a breakup fee of \$650,000 or 3.1% of purchase price of \$21 million); *In re Women First Healthcare*, 332 B.R. at 118

(approving a breakup fee of \$50,000 or 2.8% on the sale of assets worth \$1.75 million); *In re Decora Indus., Inc.*, 2002 WL 32332749 (D. Del. May 20, 2002) (Farnan, J.) (approving on appeal breakup fee of \$625,000 or 3% of purchase price); *In re Fruit of the Loom, Inc.*, Case No. 99-4497 (PJW) (Bankr. D. Del. Dec. 11, 2001) (approving a \$25 million, or 3% of purchase price, breakup fee); *In re Caldor, Inc. - NY*, Case No. 95-B-44080 (JLG) (Bankr. S.D.N.Y. Feb. 4, 1999) (order approving breakup fees of \$1,900,000 on purchase price of \$75,735,000 and \$3,550,000 on purchase price of \$142,000,000 or approximately 2.5%).

80. The Break Up Fee, which represents 3% of the aggregate of the Purchase Price under the Stalking Horse Agreement, is reasonable and consistent with the range of bid protections typically approved in bankruptcy courts in this District. Additionally, the Expense Reimbursement is market, reasonable, and similar expense reimbursements have been approved in this District.

81. The Debtors believe that the proposed Break Up Fee and Expense Reimbursement are fair and reasonably compensate the Stalking Horse Purchaser for taking actions that will benefit the Debtors' estates. The Break Up Fee and Expense Reimbursement compensate the Stalking Horse Purchaser for the time, diligence, and professional fees incurred in negotiating the terms of the Stalking Horse Agreement on an expedited timeline.

82. Also, the Debtors do not believe that the Break Up Fee and Expense Reimbursement will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser will increase the likelihood that the best possible price for the Assets will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Stalking Horse Agreement as a platform for negotiations and modifications in the context of a competitive bidding process.

83. The Break Up Fee and Expense Reimbursement were negotiated at arms'-length and in good faith and are necessary to secure the participation of the Stalking Horse Purchaser in the sale process. The Debtors submit that the sale of the Assets is in the best interests of the Debtors, their creditors, estates, and stakeholders, and therefore submit that agreeing to the Break Up Fee and Expense Reimbursement were actual, necessary costs of preserving their estates. In sum, the Break Up Fee and Expense Reimbursement are reasonable under the circumstances and will enable the Debtors to maximize the value for the Assets while limiting any chilling effect in the sale process. The Break Up Fee and Expense Reimbursement not only compensate the Debtors for the risk that they assume in foregoing a known, willing and able purchaser for a new potential acquirer, but also ensure that there is an increase in the net proceeds received by their estates, after deducting the Break Up Fee and Expense Reimbursement to be paid to the Stalking Horse Purchaser in the event of a prevailing overbid with respect to the Assets or the Assets.

**G. The Successful Bidder Should be Afforded All Protections Under Section 363(m) as A Good Faith Purchaser.**

84. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the debtor's estate notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) “fosters the ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir.

1986)); *see also Allstate Ins. Co. v. Hughes*, 174 BR. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

85. The selection of the Successful Bidder will be the product of arm’s length, good faith negotiations in an anticipated competitive purchasing process. The Debtors intend to request at the Sale Hearing a finding that the Successful Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

**H. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases.**

86. Section 365(a) of the Bankruptcy Code provides that, subject to the court’s approval, a trustee “may assume or reject any executory contracts or unexpired leases of the debtor.” 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

87. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

88. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

89. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

90. The Debtors and the Successful Bidder will present evidence at the Sale Hearing to prove the financial credibility, willingness and ability of the Successful Bidder to perform under the Contracts, Leases, or Pre-Petition Licenses. The Court and other interested parties therefore will have the opportunity to evaluate the ability of any Successful Bidder to provide adequate assurance of future performance under the Contracts, Leases, or Pre-Petition Licenses as required by section 365(b)(1)(C) of the Bankruptcy Code.

91. In addition, the Assumption and Assignment Procedures, including the Additional Assignment Procedures, are appropriate and consistent with section 365 of the

Bankruptcy Code. To the extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be cured pursuant to the Successful Bidder's Purchase Agreement. Except as otherwise limited by section 365 of the Bankruptcy Code, any provision in the Assumed Executory Contracts that would restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable pursuant to section 365(f)(1) of the Bankruptcy Code.

92. Accordingly, the Debtors submit that the Assumption and Assignment Procedures, including the Additional Assignment Procedures, for effectuating the assumption and assignment of the Assumed Executory Contracts as set forth herein are appropriate and should be approved.

**I. Relief from the Fourteen Day Waiting Period Under Bankruptcy Rule 6004(h) is Appropriate.**

93. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Similarly, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that the Bidding Procedures Order and the Sale Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

94. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should

“order otherwise” and eliminate or reduce the fourteen (14) day stay period, *Collier* suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, *Collier* provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

95. The Debtors hereby request that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sales is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

#### **NOTICE**

96. No trustee, examiner, or statutory committee of unsecured creditors has been appointed in these chapter 11 cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the DIP Lenders and the Stalking Horse Purchaser; (iii) counsel to Square 1 Bank, as senior lender; (iv) counsel to Horizon Funding Trust 2013-1, LLC as subordinated lender; (v) counsel to Wilmington Trust, N.A., as administrative agent and collateral agent to that certain Asset Purchase Agreement dated as of November 15, 2016 between Xtera Communications, Inc. and H.I.G. Europe – Neptune, Ltd.; (vi) the parties included on the Debtors’ consolidated list of twenty (20) largest unsecured creditors; (vii) the Internal Revenue Service; (viii) the United States Attorney for the District of Delaware and in Texas and any other states in which the Debtors operate; (ix) all known parties that may be asserting a lien or interest against any of the Assets or the Assets; and (x) any party who has expressed an interest in purchasing the Assets or the Assets within



the past three (3) months. The Debtors submit that, in light of the nature of the relief requested, no other or further notice is necessary or required.

*[Text Continues on the Next Page]*

WHEREFORE, the Debtors respectfully requests that the Court enter the proposed Bidding Procedures Order and the Sale Order: (a) granting the relief requested herein and (b) granting to the Debtors such other and further relief as the Court may deem proper.

Dated: November 15, 2016  
Wilmington, Delaware

Respectfully submitted,

**DLA PIPER LLP (US)**

/s/ Stuart M. Brown \_\_\_\_\_

Stuart M. Brown (Bar No. DE 4050)  
Maris Kandestin (Bar No. DE 5294)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: stuart.brown@dlapiper.com  
maris.kandestin@dlapiper.com

-and-

Thomas R. Califano (*pro hac vice* admission pending)  
Jamila Justine Willis (*pro hac vice* admission pending)  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: thomas.califano@dlapiper.com  
jamila.willis@dlapiper.com

*Proposed Counsel to Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Stalking Horse Agreement**

**CONFIDENTIAL DRAFT FOR DISCUSSION PURPOSES ONLY. THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS AMONG THE PARTIES. THIS DOCUMENT IS NOT INTENDED TO CREATE, NOR WILL IT BE DEEMED TO CREATE, A DUTY TO NEGOTIATE OR A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE, UNLESS AND UNTIL IT IS EXECUTED AND DELIVERED BY THE PARTIES.**

## **ASSET PURCHASE AGREEMENT**

**NOVEMBER [15], 2016**

**Between**

**XTERA COMMUNICATIONS, INC.**

**and**

**H.I.G. EUROPE – NEPTUNE, LTD**

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**Exhibits**

1. Assignment and Assumption Agreement
2. Patent Assignment
3. Sale Order
4. Bid Procedures Order

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\* Form to be agreed.

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT dated as of November [15], 2016 (this **Agreement**),

### BETWEEN:

- (1) Xtera Communications, Inc., a Delaware corporation (**Seller**), and
- (2) H.I.G. Europe – Neptune, Ltd, an exempted company incorporated in the Cayman Islands with limited liability (**Purchaser**).

### WHEREAS:

- (A) On November [15], 2016 (the **Petition Date**), Seller intends to file a voluntary petition for relief 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**) commencing a Bankruptcy Case (the **Bankruptcy Case**);
- (B) Seller, directly or indirectly through certain of its controlled Affiliates (the **Seller Affiliates**), intends to continue to manage its properties and operate the Business (as defined herein) as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code;
- (C) Purchaser, directly or indirectly through certain of its designated direct and indirect Subsidiaries or Affiliates (the **Purchaser Designees**), desires to purchase from Seller and the Seller Affiliates, and Seller desires to sell to Purchaser and the Purchaser Designees, certain of the assets used or useful in the conduct of the Business, and in connection therewith Purchaser, directly or indirectly through the Purchaser Designees, agrees to assume certain liabilities related to the Business from Seller and the Seller Affiliates, pursuant to the terms and subject to the conditions set forth herein and in accordance with Sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code as well as the applicable law of such other jurisdictions as may be applicable; and
- (D) The transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated pursuant to the Bid Procedures Order (as defined herein) and the Sale Order (as defined herein) to be entered in the Bankruptcy Case approving the purchase and assumption by Purchaser of the Transferred Assets (as defined herein), free and clear of any and all Liens (as defined herein) whatsoever, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure.

**NOW, THEREFORE**, the parties hereby agree as follows:

### 1. DEFINITIONS

As used herein, the following terms have the meanings set forth below:

**Acquisition** means the purchase and sale of the Transferred Assets and the assumption of the Assumed Liabilities.

**Affiliate** means, with respect to any party, any person or entity controlling, controlled by or under common control with such party.

**Agreement** has the meaning ascribed to it in the Preamble.

**Allocation** has the meaning ascribed to it in Section 10.1(a).

**Alternative Transaction** means (a) the approval by the Bankruptcy Court of a sale or sales of a portion of the Transferred Assets to any person other than Purchaser, (b) the filing of a plan or reorganization or liquidation that does not contemplate the sale of the Transferred Assets to Purchaser in accordance with the terms hereof or (c) the license, lease, sale, merger, consolidation, transfer or other disposition of a material portion of the Transferred Assets or the Business with or to any person other than Purchaser.

**Ancillary Agreements** means the Assignment and Assumption Agreement and the Patent Assignment.

**Appointee** means a trustee or other person appointed by the Bankruptcy Court to be responsible for operation or conduct of Seller or its business or assets, including any examiner with enlarged powers relating to the operation or conduct of Seller or its business or assets.

**Assignment and Assumption Agreement** means the Assignment and Assumption Agreement substantially in the form to be attached hereto as Exhibit 1 when agreed between the parties.

**Assumed Liabilities** has the meaning ascribed to it in Section 2.3(a).

**Auction** has the meaning ascribed to it in the Bid Procedures Order.

**Avoidance Action** means any Claim of Seller arising under Chapter 5 of the Bankruptcy Code and any analogous state Law Claims relating to the Transferred Assets or the Business.

**Bankruptcy Case** has the meaning ascribed to it in the Recitals.

**Bankruptcy Code** has the meaning ascribed to it in the Recitals.

**Bankruptcy Court** has the meaning ascribed to it in the Recitals.

**Bankruptcy Rules** means the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court.

**Bid Procedures Order** means the form of Order attached hereto as Exhibit 4, approving, among other things, this Agreement as a form of “stalking horse” agreement for the sale of the Transferred Assets and the bidding procedures governing such sale, which form of Order may be modified only (a) with the prior written consent of Purchaser or (b) by the Bankruptcy Court if such modified Order is in form and substance acceptable to Purchaser.

**Bid Protections** has the meaning ascribed to it in Section 7.1.

**Borrowers** has the meaning ascribed to it in the DIP Financing Agreement.

**Business** means the business of providing the products and services to the Customers as such business is currently conducted by Seller and the Seller Affiliates.

**Business Contracts** means all Transferred Contracts required to be listed in Section 4(h) of the Disclosure Schedule.



**Business Day** means a day, other than a Saturday or a Sunday, on which commercial banks are not required or authorized to close in New York City.

**Business Employee** means each employee of Seller or a Seller Affiliate who is listed in Section 6.2(a) of the Disclosure Schedule (to be mutually agreed upon by Purchaser and Seller and may be amended by mutual agreement between Purchaser and Seller from time to time prior to the Closing).

**Business Material Adverse Effect** means any change, effect, event, occurrence or state of facts that, individually or when taken together with all other such changes, effects, events, occurrences or states of fact, is materially adverse to, or has a material adverse effect on (1) the business, condition (financial or otherwise) or results of operations of the Business, taken as a whole (including the Transferred Assets and the Assumed Liabilities) or (2) the ability of Seller to consummate the Acquisition or to comply with its obligations under this Agreement or the Ancillary Agreements, other than any adverse effect resulting from (i) economic conditions of the global economy generally, to the extent not disproportionately affecting the Business as compared to other parties in its industries; (ii) acts of war, in each case involving the United States or United Kingdom, to the extent not disproportionately affecting the Business as compared to other parties in its industries; (iii) acts of God, including earthquakes, hurricanes, tornadoes, floods, tsunamis or other natural disasters, in each case involving the United States or the United Kingdom, to the extent not disproportionately affecting the Business as compared to other parties in its industries; or (iv) the execution of this Agreement or the Ancillary Agreements and the announcement or consummation of the transactions contemplated hereby and thereby.

**Cash Consideration** has the meaning ascribed to it in Section 2.6.

**Claims** means, collectively, all rights, claims (as that term is defined in Section 101(5) of the Bankruptcy Code) and causes of action, whether class, individual or otherwise in nature, under contract or in law or in equity, known or unknown, contingent or matured, liquidated or unliquidated and all rights and remedies with respect thereto.

**Closing** means the closing of the Acquisition.

**Closing Date** means the date on which the Closing occurs.

**Code** means the Internal Revenue Code of 1986, as amended.

**Contracts** means written or oral contracts, leases, subleases, licenses, indentures, agreements, commitments and other similar instruments.

**Cure Costs** means pre-petition cure costs required to be paid to cure Seller's monetary defaults under the Transferred Contracts and Transferred Leases to which Seller or any Seller Affiliate is a party pursuant to Section 365 of the Bankruptcy Code in connection with the assignment to Purchaser or a Purchaser Designee and the assumption thereof.

**Customers** means those customers of Seller and the Seller Affiliates (A) set forth in Section 1 of the Seller Disclosure Schedule and (B) that become customers of Seller or any of the Seller Affiliates from and after the date of this Agreement.

**Debtors** means Seller and each of Xtera Communications Ltd., Xtera Communications Canada Inc., Xtera Comunicacoes Do Brasil LTDA, Xtera Communications Hong Kong Ltd., Azea Networks Inc., Neovus Inc., Xtera Asia Holdings, LLC and PMX Holdings, Ltd.

**DIP Credit Bid and Release** has the meaning ascribed to it in Section 2.6.

**DIP Financing Agreement** means the Debtor-in-Possession Loan Agreement, dated as of November [15], 2016, among Xtera Communications, Inc., as borrower, the subsidiary guarantors party thereto, the lenders party thereto and Wilmington Trust, N.A. as administrative agent and collateral agent, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

**Disclosure Schedule** means the schedules to this Agreement delivered by Seller to Purchaser prior to the date of this Agreement.

**\$** means United States dollars.

**Environmental Laws** means applicable Laws relating to protection of human health and the environment.

**Equipment** means tangible personal property (and interests therein), and includes all machinery, equipment and modules.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**ERISA Affiliate** means any corporation or trade or business (whether or not incorporated) which is treated with Seller as a single employer within the meaning of Section 414 of the Code.

**Excluded Assets** has the meaning ascribed to it in Section 2.1(b).

**Excluded Taxes** means (i) all liabilities of Seller or any of its respective Affiliates in respect of any Tax for any Pre-Closing Tax Period, including any Taxes arising out of, relating to or in respect of the Transferred Assets or the operation or conduct of the Business for any Pre-Closing Tax Period and (ii) any Taxes arising in connection with the consummation of the transactions contemplated by this Agreement, including all Transfer Taxes.

**Executory Contract** means any Contract to which Seller or one of the Seller Affiliates is a party that constitutes an “executory contract” as that term is used under Section 365 of the Bankruptcy Code.

**Expense Reimbursement** means Purchaser’s reasonable out-of-pocket fees, costs and expenses (including attorneys’, financial advisors’ or other professionals’ fees, costs and expenses) incurred in connection with the negotiation, documentation, execution and delivery of this Agreement and continuing efforts to consummate the transactions contemplated by this Agreement and the Ancillary Agreements and Purchaser’s participation in the Auction, but not to exceed \$500,000 in the aggregate.

**Final Order** means an Order or Judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Seller’s Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such Order or Judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition

for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure or a similar rule of such other court of competent jurisdiction; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

**Financial Statements** means the unaudited consolidated balance sheet of Seller as of September 30, 2016.

**Former Employee** means all individuals as to whom an employer-employee relationship has existed in the past with Seller but does not exist on the Closing Date, including any such individual on long term disability.

**GAAP** means United States generally accepted accounting principles.

**Governmental Entity** means any Federal, state, local or foreign court or tribunal of competent jurisdiction, governmental agency, authority, instrumentality or regulatory body.

**Hazardous Substances** means any substance, material or waste that is defined or regulated as “hazardous”, “toxic”, “dangerous”, a “pollutant” or a “contaminant” or otherwise regulated under any Environmental Law.

**including** means including, without limitation.

**Indebtedness** of any person means all indebtedness of such person, including (a) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (b) indebtedness evidenced by any note, bond, debenture, mortgage, or other debt instrument or debt security, (c) any accrued and unpaid interest owing by such person and any breakage costs, penalties, additional interest, premiums, fees and other costs and expenses associated with prepayment or redemption of or tender for any indebtedness of a type described in clauses (a) or (b), and (d) any current liabilities.

**Inventory** means materials, supplies, work in progress, parts, spare-parts and other inventories.

**IRS** means the United States Internal Revenue Service.

**Judgment** means any judgment or decree.

**Knowledge of Seller** means the actual knowledge of Seller’s executive officers and senior managers with responsibility for the matters subject to the representations and warranties set forth in Article 4 of this Agreement, and the knowledge that such individuals would have had after due inquiry.

**Law** means any statute, law, ordinance, rule or regulation or common law interpretation thereof of any Governmental Entity.

**Leased Real Property** means, with respect to each Transferred Lease, the parcel of real property leased by Seller pursuant to such Transferred Lease.

**Liens** means any and all mortgages, liens, security interests, charges, claims, pledges or other encumbrances of any kind.

**Money Laundering Law** means applicable Laws relating to money laundering and all financial recordkeeping and reporting requirements, rules, regulations and guidelines related thereto.

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**Order** means any award, writ, injunction, Judgment, order, ruling, decision, subpoena, mandate, precept, command, directive, consent, approval, award or similar determination or finding entered, issued, made or rendered by any court of competent jurisdiction or other Governmental Entity.

**Other Transferred Intellectual Property** has the meaning ascribed to it in Section 2.1(a)(vii).

**Outside Back-up Date** has the meaning ascribed to it in Section 7.2(c).

**Overbid Protection** has the meaning ascribed to it in Section 7.1.

**Patent Assignment** means the Patent Assignment substantially in the form to be attached hereto as Exhibit 2 when agreed between the parties.

**Patent License** means the License Agreement, dated as of October 1, 2002, by and among Seller and the Regents of the University of Michigan, as amended, supplemented or otherwise modified.

**Permits** means permits, licenses, franchises, approvals, registrations or authorizations from any Governmental Entity or third party.

**Permitted Liens** means (i) such Liens as are set forth in Section 4(e) of the Disclosure Schedule; (ii) any and all statutory mechanics', carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business for sums not yet delinquent and which are not, individually or in the aggregate, material to the Business or the Transferred Assets; (iii) Liens arising under original purchase price conditional sales Contracts or equipment leases with third parties entered into in the ordinary course of business; (iv) Liens for Taxes and other governmental charges that are not yet due and payable; and (v) other minor imperfections of title, licenses or encumbrances of record, if any, that (A) are not, individually or in the aggregate, material to the Business, (B) do not materially impair the continued use and operation of the Transferred Assets to which they relate in the conduct of the Business as currently conducted and (C) do not render the Transferred Assets unmarketable.

**person** means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity or other entity.

**Petition Date** has the meaning ascribed to it in the Recitals.

**Post-Closing Tax Period** means any taxable period (or portion thereof) beginning after the Closing Date.

**Pre-Closing Tax Period** means any taxable periods (or portion thereof) ending on or before the Closing Date.

**Prepetition Credit Bid and Release** has the meaning ascribed to it in Section 2.6.

**Prepetition Loan Agreement** means the Loan and Security Agreement, dated January 16, 2015, by and among Seller, Azea Networks Inc., Neovus Inc., Xtera Asia Holdings, LLC and Square 1 Bank, as amended, supplemented or otherwise modified prior to the date hereof.

**Prevailing Bidder** has the meaning ascribed to it in Section 7.2(c).

**Proceeding** means any suit, action or proceeding.

**Purchase Price** has the meaning ascribed to it in Section 2.6.

**Purchaser** has the meaning ascribed to it in the Preamble.

**Purchaser Designees** has the meaning ascribed to it in the Recitals.

**Purchaser Material Adverse Effect** means any change, event, fact, effect or occurrence that has had a material adverse effect on the ability of Purchaser to consummate the Acquisition.

**Qualified Competing Bid** has the meaning ascribed to it in Section 7.2(b).

**Required Consents** has the meaning ascribed to it in Section 8.1(g).

**Restricted Person** means person that is (i) listed on, or owned or controlled by a person listed on, any Sanctions List; (ii) located in, organized under the laws of, or operating from any country or territory that is the target of and/or subject to any country-wide or territory-wide Sanctions (including but not limited to the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria); or (iii) otherwise a target of Sanctions.

**Retained Liabilities** has the meaning ascribed to it in Section 2.3(b).

**Sale Hearing** means the hearing to approve this Agreement and seek entry of the Sale Order.

**Sale Order** means the form of Order substantially in the form attached hereto as Exhibit 3 and in form and substance reasonably satisfactory to Seller and Purchaser.

**Sanctions** means the economic, financial and trade embargoes and sanctions laws, regulations, rules and/or restrictive measures administered, enacted or enforced by the OFAC, the United States Department of State, any other United States government entity, the United Nations Security Council, any United Nations Security Council Sanctions Committee, the European Union, any Member State of the European Union, the United Kingdom or any other government, public or regulatory authority or body.

**Sanctions List** means the “Specially Designated Nationals and Blocked Persons” list and the “Consolidated Sanctions” list maintained by OFAC or any similar list maintained by, or public announcement of Sanctions designation made by, OFAC, the United States Department of State or any other United States government entity, the United Nations Security Council, any United Nations Security Council Sanctions Committee, the European Union any Member State of the European Union, the United Kingdom or any other government, public or regulatory authority or body.

**Seller** has the meaning ascribed to it in the Preamble.

**Seller Affiliates** has the meaning ascribed to it in the Recitals.

**Seller Benefit Plan** means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA and (ii) other material plan, arrangement, agreement or policy (whether contractual, customary or discretionary) relating to pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive,

stock options, stock purchases, stock ownership, stock appreciation right, employment, compensation, deferred compensation, severance, salary continuation, termination, change-of-control, health, life, disability, group insurance, vacation, holiday, loans, fringe benefits or other employee benefits (other than plans or arrangements mandatory under applicable Law), in each case maintained or contributed to or required to be maintained or contributed to by Seller or any Seller Affiliate for the benefit of any Business Employee.

**Specified Representations** means the representations and warranties set forth in Sections 4(a) (Organization and Standing), 4(b) (Authority, Execution and Delivery; Enforceability), 4(e)(i) (Good and Valid Title), 4(f)(ii) (Intellectual Property), 4(g)(i) (Property Interests), 4(j) (Taxes); 4(r) (Brokerage), 5(a) (Organization and Standing), 5(b) (Authority, Execution and Delivery; Enforceability) and 5(f) (Brokerage).

**Subsidiary** means, with respect to any person, any other person, the amount of the voting securities, other voting ownership or voting partnership interests of which held is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first person or by another Subsidiary of such first person.

**Tax or Taxes** means (i) all forms of taxation imposed by any Federal, state, provincial, local, foreign or other Taxing Authority, including gross receipts, income, franchise, margin, windfall profits, property (real, personal or intangible), sales, transfer, use, excise, stamp, employment, unemployment, payroll, social security, estimated, value added, ad valorem, transfer, recapture, withholding, customs duties, unclaimed property, escheat, health and other taxes, fees, assessments or charges of any kind whatsoever, including any interest, penalties and additions thereto and (ii) any liability for any amount referred to in clause (i) of any person as a transferee or successor, under Treasury Regulation 1.1502-6 (or any similar provision of state, local or foreign Law), by contract, or otherwise.

**Tax Return** means any report, return, document, declaration or other information, statement or filing filed or required to be filed with any Taxing Authority with respect to Taxes, including any schedule or attachment thereto and any amendment made with respect thereof.

**Taxing Authority** means any Governmental Entity or any quasi-governmental body exercising Tax regulatory authority, including the IRS.

**Technology** means trade secrets, proprietary inventions, discoveries, know-how, processes, procedures, business and technical information, research records, records of inventions, test information and other confidential and proprietary information related thereto and all rights therein.

**Termination Fee** means an amount equal to 3½% of the sum of the Purchase Price.

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Transfer Taxes** means all sales (including bulk sales), use, transfer, recording, ad valorem, privilege, documentary, gross receipts, registration, conveyance, excise, license, stamp or similar Taxes and fees arising out of, in connection with or attributable to the transactions effectuated pursuant to this Agreement.

**Transferred Assets** has the meaning ascribed to it in Section 2.1(a).

**Transferred Contracts** has the meaning ascribed to it in Section 2.1(a)(i).

**Transferred Employee** has the meaning ascribed to it in Section 6.2(a).

**Transferred Equipment** has the meaning ascribed to it in Section 2.1(a)(iv).

**Transferred Intellectual Property** has the meaning ascribed to it in Section 2.1(a)(vii).

**Transferred Leases** has the meaning ascribed to it in Section 2.1(a)(ii).

**Transferred Patents** has the meaning ascribed to it in Section 2.1(a)(v).

**Transferred Permits** has the meaning ascribed to it in Section 2.1(a)(ix).

**Transferred Receivables** has the meaning ascribed to it in Section 2.1(a)(xiv).

**Transferred Technology** has the meaning ascribed to it in Section 2.1(a)(viii).

**Transferred Trademarks** has the meaning ascribed to it in Section 2.1(a)(vi).

**Unexpired Lease** means any lease to which Seller or any of the Seller Affiliates is a party that constitutes an “unexpired lease” as that term is used under Section 365 of the Bankruptcy Code.

**WARN Act** means the Worker Adjustment and Retaining Notification Act, as amended, and any similar state or local applicable Law.

## 2. PURCHASE AND SALE OF TRANSFERRED ASSETS

### 2.1 Transferred Assets and Excluded Assets

- (a) Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and upon the terms and subject to the conditions of this Agreement, Seller shall sell, assign, transfer, convey and deliver to Purchaser and the Purchaser Designees, and Purchaser agrees to, and agrees to cause the Purchaser Designees to, purchase, acquire and accept from Seller, all of Seller’s right, title and interest in, to and under the following property, rights, contracts, Claims and assets as they exist at the time of Closing (collectively, the **Transferred Assets**), free and clear of any and all Liens of any kind and every kind and nature whatsoever:
- (i) all Contracts (A) set forth in Section 2.1(a)(i) of the Disclosure Schedule, (B) entered into by Seller or any of the Seller Affiliates with any Customer from and after the date of this Agreement or (C) to which Seller or any of the Seller Affiliates is a party that relate primarily to the operation or conduct of the Business and that have been entered into in the ordinary course of business and consistent in nature and scope with the past practices of the Business (collectively, the **Transferred Contracts**);
  - (ii) all the real property leases set forth in Section 2.1(a)(ii) of the Disclosure Schedule to which Seller or any of the Seller Affiliates is a party (the **Transferred Leases**);
  - (iii) all Inventory (A) set forth in Section 2.1(a)(iii) of the Disclosure Schedule or (B) otherwise owned by Seller or any of the Seller Affiliates, wherever located, and that is used or held for use primarily in the operation or conduct of the Business;

- (iv) all Equipment (A) set forth in Section 2.1(a)(iv) of the Disclosure Schedule or (B) otherwise owned by Seller or any of the Seller Affiliates, wherever located, and that is used or held for use primarily in the operation or conduct of the Business and (collectively, the **Transferred Equipment**);
- (v) all United States and foreign patents and all foreign counterparts of the United States patents (including all reissues, divisions, continuations, continuations-in-part, and extensions thereof and reexaminations for any of the foregoing, and the right to claim foreign priority thereto), patentable designs, patent disclosures and inventions, and United States, foreign and international patent applications owned by Seller or any of the Seller Affiliates that are used or held for use primarily in the operation or conduct of the Business, including those set forth in Section 2.1(a)(v) of the Disclosure Schedule (the **Transferred Patents**);
- (vi) all trademarks, trademark registrations and trademark applications set forth in Section 2.1(a)(vi) of the Disclosure Schedule, including all service marks, and all registrations and applications containing, incorporating or associated with “Xtera”, in each case, together with the goodwill associated therewith (the **Transferred Trademarks**);
- (vii) all (A) domain names, logos, trade names, trade dress and company names containing, incorporating or associated with “Xtera”, together with all variations and acronyms thereof and all other identifiers of source or goodwill containing, incorporated or associated with any of the foregoing, and (B) copyrights owned by Seller or any of the Seller Affiliates that are used or held for use primarily in the operation or conduct of the Business (collectively, the **Other Transferred Intellectual Property** and, together with the Transferred Patents and the Transferred Trademarks, the **Transferred Intellectual Property**);
- (viii) all Technology owned by Seller or any of the Seller Affiliates that is used or held for use primarily in the operation or conduct of the Business (the **Transferred Technology**);
- (ix) all Permits that are used or held for use primarily in the operation or conduct of the Business (the **Transferred Permits**);
- (x) all assets of Seller or any of the Seller Affiliates set forth in Section 2.1(a)(x);
- (xi) all Claims and all rights to assert Claims, including for the avoidance of doubt all Avoidance Actions, to the extent primarily arising out of, relating to or in respect of any Transferred Asset or any Assumed Liability (other than any such items arising under insurance policies to the extent they relate to occurrences arising out of or resulting from the operation or conduct of the Business prior to the Closing), along with any and all recoveries by settlement, Judgment or otherwise in connection with any such Claims or rights;
- (xii) all books of account, general, financial and accounting records, files, personnel records (to the extent permitted by Law and only with respect to the Transferred Employees), invoices, customers’ and suppliers’ lists, other distribution lists, billing records, sales and promotional literature, displays, manuals and customer and supplier correspondence



owned by Seller or any of the Seller Affiliates that are used or held for use primarily in the operation or conduct of the Business, whether in the possession of Seller, any of the Seller Affiliates or any other person, except to the extent relating to the Excluded Assets or the Retained Liabilities;

- (xiii) all cash or cash equivalents of Seller or any of the Seller Affiliates, including all cash or cash equivalents (A) received from any Customer after the date of this Agreement or (B) held as of the date of this Agreement exclusively to cover the provision of goods or services to Customers or on deposit to cover any credit card facility;
  - (xiv) all accounts, notes receivable, unbilled receivables and similar rights to receive payments of Seller or any Seller Affiliate from any Customer or under any Transferred Contract, including all accounts, notes receivable, unbilled receivables and similar rights to receive payments accruing or generated under any Transferred Contract or with respect to any Customer from and after the date of this Agreement (the **Transferred Receivables**);
  - (xv) all guarantees, warranties, indemnities and similar rights in favor of Seller or any of the Seller Affiliates in respect of any Transferred Asset or any Assumed Liability;
  - (xvi) all goodwill of the Business; and
  - (xvii) all prepaid expenses that are used or held for use primarily in, or that arise primarily out of, the operation or conduct of the Business.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Transferred Assets do not include any assets or rights other than the assets specifically listed or described in Section 2.1(a) and, for the avoidance of doubt, expressly exclude the following assets as they exist at the time of Closing (collectively, the **Excluded Assets**):
- (i) all assets of Seller or any of the Seller Affiliates set forth in Section 2.1(b)(i) of the Disclosure Schedule;
  - (ii) all accounts, notes receivable and similar rights to receive payments of Seller or any of the Seller Affiliates prior to the Closing Date, other than the Transferred Receivables;
  - (iii) any shares of capital stock or other equity interests of any Affiliate of Seller or any of the Seller Affiliates;
  - (iv) all Seller Benefit Plans (including any trusts, insurance policies, contracts and administrative service agreements related thereto) and related assets;
  - (v) all records prepared in connection with the sale of the Business (or any portion thereof), including bids received from third persons and analyses relating to the sale of the Business (or any portion thereof); *provided, however*, that any such records shall be made available to Purchaser in accordance with Sections 6.2 and 10.3; and
  - (vi) all personnel records to the extent transfer is not permitted by Law or not relating to Transferred Employees.

## 2.2 Consents to Certain Assignments

- (a) Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute an agreement to transfer or assign any asset (including any Contract) or any claim or right or any benefit arising under or resulting from such asset if an attempted direct or indirect assignment thereof, without the consent of a third party, would constitute a breach, default, violation or other contravention of the rights of such third party, would be ineffective with respect to any party to an agreement concerning such asset, claim or right, or would in any way adversely affect the rights of Seller or any of the Seller Affiliates or, upon transfer, Purchaser under such asset, claim or right, unless otherwise provided under the Bankruptcy Code or the Sale Order. If any transfer or assignment by Seller to Purchaser, or any direct or indirect assumption by Purchaser, of any interest in, or liability, obligation or commitment under, any asset, claim or right requires the consent of a third party, then such transfer or assignment or assumption must be made subject to such consent being obtained. Prior to the Closing, Seller shall provide or cause to be provided all commercially reasonable assistance to Purchaser (not including the payment of any consideration) reasonably requested by Purchaser to secure any such consents from third parties.
- (b) If any consent to assignment is not obtained prior to the Closing or such assignment is not attainable pursuant to the Bankruptcy Code or the Sale Order (other than the Required Consents), the Closing will nonetheless take place on the terms set forth in this Agreement and, thereafter, Seller and Purchaser shall use their respective commercially reasonable efforts to secure such consent as promptly as practicable after the Closing and cooperate in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser under which (i) Purchaser will obtain (without infringing upon the legal rights of such third party or violating any applicable Law) the economic claims, rights and benefits (net of the amount of any related Tax costs (which shall be reduced by any related Tax benefits) imposed on Seller or any of its Affiliates (except for any such Tax costs that are Excluded Taxes)) under the asset, claim or right with respect to which the consent has not been obtained in accordance with this Agreement, (ii) Purchaser will assume any related economic burden (including the amount of any related Tax costs (which shall be reduced by any related Tax benefits) imposed on Seller or any of its Affiliates (except for any such Tax costs that are Excluded Taxes)) with respect to the asset, claim or right with respect to which the consent has not been obtained in accordance with this Agreement and (iii) Seller will bear any related economic burden resulting from the implementation of any such alternative arrangement pursuant to this Section 2.2(b) (other than the amount of any such related Tax costs borne by Purchaser pursuant to clauses (i) and (ii) above) because a third party consent has not been obtained in accordance with this Agreement.

## 2.3 Assumption of Liabilities

- (a) Upon the terms and subject to the conditions of this Agreement, Purchaser shall, or shall cause the Purchaser Designees to, assume, effective as of the Closing, and shall, or shall cause the Purchaser Designees to, pay, perform and discharge when due, only the following obligations, liabilities and commitments (collectively, the **Assumed Liabilities**):
- (i) all accounts payable of Seller or any of the Seller Affiliates set forth in Section 2.3(a)(i) of the Disclosure Schedule;
  - (ii) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates set forth in Section 2.3(a)(ii) of the Disclosure Schedule;

- (iii) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates under the Transferred Contracts and the Transferred Permits to the extent such obligations, liabilities and commitments relate to the period from and after the Closing Date, but excluding any obligations, liabilities or commitments arising out of or relating to any breach or default or violation by Seller of any such Transferred Contract or Transferred Permit;
  - (iv) all Taxes arising out of, relating to or in respect of the Business or Transferred Assets for Post-Closing Tax Periods; and
  - (v) all obligations, liabilities and commitments accruing, arising out of or relating to the use or ownership of the Transferred Assets or the operation or conduct of the Business, in each case after the Closing; and
  - (vi) Cure Costs to be paid pursuant to Section 2.4, *provided, however*, that if the aggregate amount of Cure Costs exceeds \$150,000, the Purchase Price shall be reduced in an amount equal to the aggregate amount of the Cure Costs in excess of \$150,000, to be applied in a manner determined by Purchaser in its sole discretion.
- (b) Notwithstanding any other provision of this Agreement, Purchaser and the Purchaser Designees shall not assume or be liable for any of the following obligations, liabilities or commitments, each of which will be retained and paid, performed and discharged when due by Seller (collectively, the **Retained Liabilities**):
- (i) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates not listed in Section 2.3(a);
  - (ii) all accounts payable of Seller or any of the Seller Affiliates on the Closing Date arising out of the operation or conduct of the Business before the Closing Date that are not set forth in Section 2.3(a)(i) of the Disclosure Schedule;
  - (iii) Excluded Taxes;
  - (iv) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates relating to or arising out of the Excluded Assets;
  - (v) except for the obligations, liabilities and commitments expressly assumed by Purchaser under Section 6.2, all obligations, liabilities and commitments with respect to employment, termination of employment, compensation or employee benefits of any nature (including benefits to be provided under the Seller Benefit Plans) owed to any Business Employee, Former Employee, consultant or independent contractor (or any dependent or beneficiary of the foregoing), whether or not any such individual becomes a Transferred Employee or otherwise enters into employment or other service with Purchaser or its Affiliates at or after Closing, and that arises out of or relates to the employment or service provider relationship between Seller or its Affiliates and any such individual or the termination of such relationship;
  - (vi) all obligations, liabilities and commitments of Seller or any of the Seller Affiliates relating to or arising out of any Proceeding pending as of or prior to the Closing or

which arises out of or relates to the operation or conduct of the Business or the Transferred Assets by Seller or its Affiliates prior to the Closing Date;

- (vii) all obligations, liabilities and commitments under Environmental Laws to the extent arising out of the operation or conduct of the Business or the use or operation of the Transferred Assets, in each case on or prior to the Closing Date;
- (viii) all Indebtedness of Seller or any of its Affiliates; and
- (ix) except for obligations, liabilities and commitments that are expressly Assumed Liabilities, all obligations, liabilities and commitments of any entity not incorporated under the laws of a state or subdivision of the United States;

## **2.4 Assumption of Contracts**

- (a) With respect to each Executory Contract that is a Transferred Contract, from and after the date hereof until two business days prior to the Closing Date, Seller shall add any such Executory Contract to Section 2.1(b)(i) of the Disclosure Schedule as Purchaser may, in its sole discretion, request in writing. Any such Executory Contract will no longer be deemed a Transferred Contract and Seller shall not, and shall cause the Seller Affiliates not to, assign such Executory Contract to Purchaser.
- (b) With respect to each Unexpired Lease that is a Transferred Lease, from and after the date hereof until two business days prior to the Closing, Seller shall add any such Unexpired Lease to Section 2.1(b)(i) of the Disclosure Schedule as Purchaser may, in its sole discretion, request in writing. Any such deleted Unexpired Lease will no longer be deemed a Transferred Lease and Seller shall not, and shall cause the Seller Affiliates not to, assign such Unexpired Lease to Purchaser.
- (c) Seller shall, and shall cause the Seller Affiliates to, take all actions required to assign the Transferred Contracts and Transferred Leases to Purchaser and taking all action required to facilitate any negotiations with the counterparties to such Transferred Contracts and Transferred Leases and to obtain an Order containing a finding that the assumption and assignment of the Transferred Contracts and Transferred Leases to which Seller or any Seller Affiliate is a party to Purchaser satisfies all applicable requirements of Section 365 of the Bankruptcy Code.
- (d) At Closing, Purchaser shall, pursuant to the Sale Order and the Assignment and Assumption Agreement, assume each of the Transferred Contracts and Transferred Leases that is capable of being assumed and assigned. At Closing, Purchaser shall pay all Cure Costs, if any, agreed between the various counterparties, Purchaser and Seller or as otherwise required by an Order of the Bankruptcy Court in connection with the assumption and assignment of the Transferred Contracts and Transferred Leases.

## **2.5 Ancillary Agreements**

At the Closing, Seller and Purchaser shall enter into the Assignment and Assumption Agreement. At the Closing, Seller shall execute and deliver the Patent Assignment with respect to the Transferred Patents.

## 2.6 Purchase Price

At the Closing, Purchaser shall pay, or shall cause to be paid, to Seller the following aggregate consideration for the purchase of the Transferred Assets, subject to adjustment in accordance with the proviso in Section 2.3(a)(vi) (the **Purchase Price**):

- (a) the reduction in an amount equal to \$[●]<sup>1</sup> of the aggregate amount outstanding (or, if the aggregate amount outstanding is less, than the entirety of that aggregate amount) under the DIP Financing Agreement with respect to which Seller and the guarantors under the DIP Financing Agreement are joint and several obligors in full and final satisfaction of the obligations under the DIP Financing Agreement (the **DIP Credit Bid and Release**); and
- (b) an amount of cash equal to \$10,000,000 minus the aggregate amount outstanding under the DIP Financing Agreement on the Closing Date, but in no event to exceed \$2,600,000 (the **Cash Consideration**);

*provided, however,* that, subject to the Bid Procedures Order and applicable Law, if Purchaser acquires and assumes the Prepetition Loan Agreement at any time prior to Closing, Purchaser may reduce the amount of the aggregate amount outstanding under the Prepetition Loan Agreement with respect to which Seller and the other borrowers and guarantors under the Prepetition Loan Agreement are joint and several obligors pursuant to Section 363(k) of the Bankruptcy Code (any such reduction in the amount of the aggregate amount outstanding, the **Prepetition Credit Bid and Release**). Purchaser and Seller acknowledge and agree that the amount of the obligations under the Prepetition Loan Agreement not included in any Prepetition Credit Bid and Release shall continue to be a secured Claim in the Bankruptcy Case with respect to all other parties to the Prepetition Loan Agreement.

## 3. CLOSING

### 3.1 Closing

The parties shall hold the Closing at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10020, on the second Business Day after all the conditions set forth in Article 7 have been satisfied (or, to the extent permitted, waived by the party or parties entitled to the benefit thereof), other than those conditions that, by their nature, are to be satisfied at the Closing (*provided* that such conditions would be so satisfied or have otherwise been waived), or at such other place, time and date as may be agreed by Seller and Purchaser in writing. Seller and Purchaser shall deem the Closing to be effective as of 11:59 p.m. on the Closing Date (the **Effective Time**).

### 3.2 Transactions to be Effected at the Closing

- (a) Seller shall, or cause shall cause one or more of the Seller Affiliates to, deliver to Purchaser:
  - (i) a certified copy of the Sale Order as entered into by the Bankruptcy Court;
  - (ii) an executed counterpart of the Assignment and Assumption Agreement;
  - (iii) an executed Patent Assignment and such other appropriately executed assignments and other documents, certificates and instruments of conveyance, in forms reasonably satisfactory to Purchaser and suitable for filing with the United States Patent and

<sup>1</sup> Note to Seller: Amount of DIP Credit Bid and Release subject to a final agreement on DIP budget.

Trademark Office and the corresponding agencies in all relevant jurisdictions (including with respect to legalization, notarization, consularization, apostille, certification and other authentication), as are reasonably necessary to record and perfect the Patent Assignment and to vest in Purchaser all right, title and interest in and to the Transferred Patents in accordance with applicable law;

- (iv) duly executed assignments of the Transferred Trademarks, in forms suitable for recording in the applicable jurisdictions, in form and substance reasonably satisfactory to Purchaser;
  - (v) general assignments of all Other Transferred Intellectual Property, in form and substance reasonably satisfactory to Purchaser;
  - (vi) appropriately executed counterparts to such other deeds, bills of sale, assignments and other instruments of transfer necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, in form and substance reasonably satisfactory to Purchaser;
  - (vii) the officer's certificates referred to in Section 8.1; and
  - (viii) a DVD, CD ROM or similar electronic storage medium containing the documents that Purchaser has previously been granted access in the "data room" created and maintained by Seller in connection with Purchaser's review of the Business.
- (b) Purchaser shall, or shall cause one or more of the Purchaser Designees to, deliver to Seller:
- (i) the Purchase Price;
  - (ii) an executed counterpart of the Assignment and Assumption Agreement;
  - (iii) appropriately executed counterparts to such other deeds, bills of sale, assignments and other instruments of transfer necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, in form and substance reasonably satisfactory to Purchaser;
  - (iv) the officer's certificates referred to in Section 8.2.

#### **4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Purchaser, as of the date of this Agreement and as of the Closing Date, as follows, except as set forth in the Disclosure Schedule (with specific reference to the applicable provision, subprovision, section or subsection of this Agreement, except that any disclosures on the Disclosure Schedule shall be deemed disclosed for purposes of each other provision, subprovision, section or subsection of this Agreement to the extent reasonably apparent on its face):

(a) **Organization and Standing**

Seller is duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of the Seller Affiliates is duly organized, validly existing and in good standing under the laws of its jurisdiction of its organization. Each of Seller and each of the Seller Affiliates has the corporate power and authority to enable it to own, lease or otherwise hold the

Transferred Assets owned, leased or otherwise held by it and to conduct the Business as currently conducted by it. Each of Seller and each of the Seller Affiliates is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction in which the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary.

(b) **Authority, Execution and Delivery; Enforceability**

- (i) Subject to the Bankruptcy Court's entry of the Sale Order, Seller has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to consummate the transactions contemplated to be consummated by it by this Agreement and the Ancillary Agreements. Each of Seller and each of the Seller Affiliates has taken all corporate action required by its certificate of incorporation or by-laws or similar organizational documents to authorize the execution and delivery of this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to authorize the performance of its respective obligations under, and consummation of the transactions contemplated to be consummated by it by this Agreement and such Ancillary Agreements.
- (ii) Seller has duly executed and delivered this Agreement and prior to the Closing will have duly executed and delivered each Ancillary Agreement to which it is, or is specified to be, a party, and this Agreement constitutes, and each Ancillary Agreement to which it is, or is specified to be, a party will, upon execution and delivery constitute, its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to the Bankruptcy Court's entry of the Sale Order.

(c) **No Conflicts or Violations; No Consents or Approvals Required**

- (i) The execution and delivery by Seller of this Agreement do not, the execution and delivery by Seller of each Ancillary Agreement to which it is, or is specified to be, a party will not, and the performance of its obligations under, and the consummation of the transactions contemplated to be consummated by it by this Agreement and such Ancillary Agreements will not, conflict with or result in any breach of or constitute a default under, or result in the creation of any Lien (other than Permitted Liens or Liens caused by Purchaser) upon any of the Transferred Assets under, any provision of (A) its certificate of incorporation or by-laws or the organizational documents of any Seller Affiliate, (B) any material Contract to which Seller or any Seller Affiliate is a party or by which any of the Transferred Assets is bound, or (C) any material Judgment or applicable Law applicable to Seller or any of the Transferred Assets, other than, in the case of clause (B) above only, any such items that would not reasonably be expected to materially and adversely affect the Business or the Transferred Assets, taken as a whole.
- (ii) No consent, approval or authorization of, or registration, declaration or filing with, any Governmental Entity is required to be obtained or made by or with respect to Seller or any of the Seller Affiliates in connection with the execution, delivery and performance of this Agreement or the consummation of the Acquisition, other than the Bankruptcy Court's entry of the Sale Order.

(d) **Financial Statements; Absence of Undisclosed Liabilities**

- (i) Section 4(d) of the Disclosure Schedule sets forth the Financial Statements. The Financial Statements were prepared in accordance with GAAP, applied on a consistent basis and fairly present in all material respects the assets, liabilities and financial condition of the Business as of the date of such statements and the results of operations and changes in cash flow for the periods covered by such statements.
  - (ii) Seller has no liabilities arising out of, relating to or otherwise in respect of the Transferred Assets, the Business or the operation or conduct of the Business, other than (i) as specifically set forth in the Financial Statements; (ii) liabilities specifically described in Section 4(d)(ii) of the Disclosure Schedule and (iii) liabilities incurred in the ordinary course of business consistent with past practice since the date of the balance sheet in the Financial Statements.
- (e) **Good and Valid Title**
- (i) Seller or one of the Seller Affiliates has, and as of the Closing Date will have, good and marketable title to all material Transferred Assets, in each case free and clear of all Liens, other than Permitted Liens.
  - (ii) The Transferred Equipment is in reasonably good repair and operating condition (giving due account to ordinary wear and tear) and is reasonably adequate and suitable for its present uses.
  - (iii) This Section 4(e) does not relate to intellectual property, which is the subject of Section 4(f), or real property, which is the subject of Section 4(f)(viii).
- (f) **Intellectual Property**
- (i) Section 2.1(a)(v) of the Disclosure Schedule sets forth a true and complete list of the patent and patent application numbers and the jurisdictions where the Transferred Patents are registered or where applications have been filed. Section 2.1(a)(vi) of the Disclosure Schedule sets forth a true and complete list of the trademarks, trademark registration and application numbers and the jurisdictions where the Transferred Trademarks are registered or where applications have been filed. Except as set forth in Sections 2.1(a)(v) and 2.1(a)(vi) of the Disclosure Schedule, all required filings and fees related to the foregoing Transferred Intellectual Property have been timely filed with and paid to the relevant Governmental Entities and authorized registrars, and all such Transferred Intellectual Property is otherwise in good standing. As of the date of this Agreement, no Transferred Intellectual Property has been or is now involved in any interference, reissue, reexamination, review, opposition or cancellation proceeding and, to the Knowledge of Seller, no such action is or has been threatened with respect to any of the Transferred Intellectual Property. As of the date of this Agreement, the Transferred Intellectual Property does not include any other United States or foreign items of registered Transferred Intellectual Property other than those listed in Sections 2.1(a)(v) and 2.1(a)(vi) of the Disclosure Schedule.
  - (ii) Seller or one of the Seller Affiliates is the owner of the Transferred Intellectual Property, or has the right to use the Transferred Intellectual Property under licenses, free and clear of all Liens, other than Permitted Liens. The Transferred Intellectual Property is all intellectual property that is necessary for the conduct of the Business. There is no



other intellectual property that is necessary for the Business that is not owned or licensed by Seller or one of the Seller Affiliates. Neither Seller nor any of the Seller Affiliates has granted any license of any kind relating to any material Transferred Intellectual Property.

- (iii) The Transferred Intellectual Property is valid, subsisting and enforceable. Seller and each of the Seller Affiliates have taken all reasonable steps to maintain the Transferred Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Transferred Technology, including requiring all persons having access thereto to execute written non-disclosure agreements.
- (iv) The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Purchaser's right to own, use or hold for use any intellectual property as owned, used or held for use in the conduct of the Business as currently conducted.
- (v) Neither Seller nor any of the Seller Affiliates has granted any license of any kind relating to any material Transferred Intellectual Property or Transferred Technology. Neither Seller nor any of the Seller Affiliates is a party to or bound by any material license, sublicense, option or similar Contract relating in whole or in part to the Transferred Intellectual Property or Transferred Technology. Neither Seller nor any of the Seller Affiliates is bound by or a party to any agreement materially restricting the use of any material Transferred Intellectual Property or Transferred Technology (including, by way of example, any covenant not to sue, covenant not to compete, coexistence agreement or settlement agreement).
- (vi) Neither Seller nor any of the Seller Affiliates has received in the past two years any notice or other assertion (A) claiming that the use, sale, offer for sale, manufacture, importation, distribution, lease or any other exploitation of the Transferred Intellectual Property or Transferred Technology infringes, misappropriates or otherwise violates the intellectual property rights of any person or (B) challenging the validity, enforceability, registrability, ownership or use of any Transferred Intellectual Property or Transferred Technology (including oppositions, interferences, reexaminations, reviews, cease and desist letters or invitations to take a license). No Claims are pending or, to the Knowledge of Seller, threatened, as of the date of this Agreement against Seller or any of the Seller Affiliates by any person claiming infringement, misappropriation or other violation of the intellectual property rights of any such person in connection with the Business. Neither Seller nor any of the Seller Affiliates is subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Transferred Intellectual Property.
- (vii) The conduct of the Business does not infringe upon, misappropriate or otherwise violate any intellectual property of any person, and, to the Knowledge of Seller, no third party is infringing, misappropriating or otherwise violating, or has infringed, misappropriated or otherwise violated, any of the material Transferred Intellectual Property or Transferred Technology.
- (viii) Seller and each of the Seller Affiliates has obtained valid and enforceable written assignments to Seller or any of the Seller Affiliates of all ownership interests and rights

of any person in all material Transferred Intellectual Property and Transferred Technology.

- (ix) There has been no loss of, or unauthorized access, use, disclosure or modification of any Transferred Technology, except as would not reasonably be expected to materially and adversely affect the operation of the Business or the value of the Transferred Assets.

(g) **Property Interests**

- (i) Section 2.1(a)(ii) of the Disclosure Schedule sets forth a true, correct and complete description of the Transferred Leases. Seller has delivered to Purchaser a true, correct and complete copy of the Transferred Leases including all amendments, extensions, renewals, modifications or other agreements with respect thereto pursuant to which Seller or one of the Seller Affiliates occupies the Leased Real Property. The Transferred Leases are valid, binding, enforceable and in full force and effect, and Seller or one of the Seller Affiliates enjoys peaceful and undisturbed possession of the Leased Real Property and no notice of termination has been delivered under any Transferred Lease. To the Knowledge of Seller, each of the parties to such Transferred Leases have performed in all material respects all obligations required to be performed under each Transferred Lease.
- (ii) Neither Seller nor any of the Seller Affiliates has (A) received nor given any notice of any breach or default or any event that with notice or lapse of time, or both, would constitute a breach or default by Seller or any of the Seller Affiliates under the Transferred Leases and, to the Knowledge of Seller, no other party is in breach or default thereof; (B) subleased, assigned or otherwise granted to any person the right to use or occupy such Leased Real Property or any portion thereof; and (C) pledged, mortgaged or otherwise granted a Lien on its leasehold interest in the Leased Real Property that remains in effect.
- (iii) Neither Seller nor any of the Seller Affiliates has received any written notice of (A) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (B) existing, pending or threatened condemnation proceedings affecting the Leased Real Property or (C) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which, in any of the foregoing clauses (A) through (B), could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty that has not been substantially repaired.

(h) **Material Contracts**

- (i) Section 4(h) of the Disclosure Schedule sets forth each of the following Contracts to which Seller or one of the Seller Affiliates is a party or is bound as of the date of this Agreement:
  - (A) a covenant not to compete (other than (A) pursuant to any radius restriction contained in any real estate lease, reciprocal easement or development, construction, operating or similar agreement and (B) any such covenant

contained in any agreement with a broker) or that otherwise materially limits the freedom of the Business to engage in any business or compete with any person;

- (B) a continuing Contract for the future purchase of materials, supplies, equipment, or commodities in any such case which has an aggregate future obligation to any person in excess of \$50,000 and is not terminable by Seller or one of the Seller Affiliates by notice of not more than 60 days for a cost of less than \$50,000;
- (C) a management, service, consulting or other similar Contract in any such case which has an aggregate future obligation to any person in excess of \$50,000 and is not terminable by Seller or one of the Seller Affiliates by notice of not more than 60 days for a cost of less than \$50,000;
- (D) a lease or similar Contract with any person (other than Seller or one of the Seller Affiliates) under which Seller or one of the Seller Affiliates is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by any person which lease or similar Contract has an aggregate future obligation in excess of \$50,000 and is not terminable by Seller or one of the Seller Affiliates by notice of not more than 60 days for a cost of less than \$50,000;
- (E) a material license of intellectual property or Technology which has an aggregate future obligation to any person in excess of \$50,000 and is not terminable by Seller or one of the Seller Affiliates by notice of not more than 60 days for a cost of less than \$50,000;
- (F) a Contract required to be disclosed in Section 4(f)(iii) of the Disclosure Schedule;
- (G) a Contract under which Seller or one of the Seller Affiliates has borrowed any money from, or issued any note, bond, debenture or other evidence of indebtedness for borrowed money to, any person or any other note, bond, debenture or other evidence of indebtedness for borrowed money of Seller or one of the Seller Affiliates;
- (H) a Contract under which (A) any person (other than Seller or one of the Seller Affiliates) has directly or indirectly guaranteed indebtedness, liabilities or obligations of Seller or one of the Seller Affiliates or (B) Seller or one of the Seller Affiliates has directly or indirectly guaranteed indebtedness, liabilities or obligations of any person, other than Seller or one of the Seller Affiliates (in each case other than endorsements for the purpose of collection in the ordinary course of business);
- (I) a Contract with (A) Seller or any of its Affiliates or (B) any officer or director of Seller or any of its Affiliates;

- (J) a Contract that relates to the acquisition or disposition of any business, a material amount of stock or assets of any person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
  - (K) a Contract that requires any party thereto to purchase or sell a stated portion of its requirements or outputs or that contains a “take or pay” provision;
  - (L) a Contract granting a Lien (other than a Permitted Lien) upon any Transferred Asset;
  - (M) a Contract for capital expenditures in excess of \$50,000 individually or in the aggregate;
  - (N) a Contract concerning a franchising, partnership, joint venture or similar arrangement;
  - (O) a Contract which provides for the sale of goods or services in excess of \$50,000 in any consecutive 12-month period after the date of this Agreement;
  - (P) a Contract that provides for the indemnification of any person or the assumption of any Tax, environmental or other obligation, liability or commitment of any person;
  - (Q) a broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing, consulting or advertising Contract, in each case that provides for exclusivity;
  - (R) a Contract with any Governmental Entity;
  - (S) a Contract that imposes confidentiality obligations; or
  - (T) any other Contract that has an aggregate future obligation to any person in excess of \$100,000 and is not terminable by Seller or one of the Seller Affiliates by notice of not more than 60 days for a cost of less than \$100,000.
- (ii) Except as otherwise disclosed on Section 4(h)(ii) of the Disclosure Schedule, all the Business Contracts are valid, binding and in full force and effect and are enforceable by Seller or one of the Seller Affiliates in accordance with their terms, subject, as to enforceability, to the effect of the Bankruptcy Code. Seller or one of the Seller Affiliates has performed all material obligations required to be performed by it to date under the Business Contracts, it is not in material breach or material default thereunder and, to the Knowledge of Seller, (A) no other party to any Business Contract, as of the date of this Agreement, is in material breach or material default thereunder, (B) there are no disputes pending or threatened under any Business Contract, and (C) neither Seller nor any Seller Affiliate has received notice from any other party to a Business Contract of such party’s intent to terminate or discontinue or reduce any commitments under such Business Contract. Seller has delivered to Purchaser a true, correct and complete copy of each Transferred Contract.

(i) **Permits**

Each Transferred Permit and its date of issuance and expiration is set forth in Section 4(i) of the Disclosure Schedule. All Transferred Permits are validly held by Seller or one of the Seller Affiliates and Seller or one of the Seller Affiliates has complied in all material respects with the terms and conditions thereof. Neither Seller nor any of the Seller Affiliates has received written notice during the past 24 months of any Proceeding relating to the suspension, modification, revocation or nonrenewal of any Transferred Permits the loss of which would reasonably be expected to materially and adversely affect the Business or the Transferred Assets, taken as a whole. None of the Transferred Permits would reasonably be expected to be subject to suspension, modification, revocation or nonrenewal as a result of the execution and delivery of this Agreement or the consummation of the Acquisition, except for any such suspensions, modifications, revocations or nonrenewals that would not reasonably be expected to materially and adversely affect the Business or the Transferred Assets, taken as a whole.

(j) **Taxes**

- (i) (A) All Tax Returns required to be filed by the Code or by applicable state, provincial, local or foreign Tax laws to the extent such Tax Returns relate to the Transferred Assets or the Business for Pre-Closing Tax Periods have been timely filed or will be timely filed (taking into account any valid extensions), and all such Tax Returns are true, correct and complete in all material respects, (B) all Taxes due with respect to the Transferred Assets and the Business (whether or not reflected on any Tax Return) have been paid in full or will be timely paid in full by the due date thereof, (C) no Claims are being asserted in writing with respect to any Taxes with respect to the Transferred Assets, the Business or the conduct of the Business, (D) there are no Liens for Taxes on any of the Transferred Assets, other than Permitted Liens, (E) none of Seller or any of its Affiliates has requested or obtained any extension of time within which to file any material Tax Return in respect of the Transferred Assets, which Tax Return has not since been filed.
- (ii) Each of Seller and the Seller Affiliates has complied in all material respects with record keeping and tax reporting obligations relating to income and employment taxes due with respect to compensation paid to employees that relates to the Transferred Assets or the Business, including withholding of all taxes required to be withheld.
- (iii) No Taxing Authority with which Seller or any of the Seller Affiliates does not file a particular Tax Return with respect to the Transferred Assets or the Business has claimed that Seller or any of the Seller Affiliates is or may be subject to taxation by that Taxing Authority. None of Seller or any of its Affiliates is engaged in (or is treated as engaged in due to prior activities) a trade or business through a “permanent establishment” within the meaning of an applicable income Tax treaty in any jurisdiction other than the United States in connection with the Transferred Assets or the conduct of the Business.
- (iv) Neither Seller nor any of the Seller Affiliates has received an advance payment for goods with respect to which Purchaser is assuming the obligation to deliver.
- (v) No Transferred Asset is (A) an equity interest in any person or (B) tax-exempt use property within the meaning of Section 168(g) of the Code.

- (vi) For purposes of this Section 4(j), all references to Seller or any of its Affiliates shall be deemed to include any person that was merged with or liquidated into Seller or such Affiliate, as applicable.

(k) **Proceedings**

Section 4(k) of the Disclosure Schedule sets forth a list of each pending or, to the Knowledge of Seller, threatened investigation by a Governmental Entity or Proceeding against Seller or any of the Seller Affiliates and each investigation by a Governmental Entity or Proceeding that was pending or, to the Knowledge of Seller, threatened, since January 1, 2013 against Seller or any of the Seller Affiliates. Neither Seller nor any of the Seller Affiliates is a party or subject to or in default under any unsatisfied Judgment applicable to the Transferred Assets, the Assumed Liabilities or the conduct of the Business.

(l) **Absence of Changes or Events**

Except as otherwise disclosed on Section 4(l) of the Disclosure Schedule, (a) Seller and each of the Seller Affiliates has conducted the Business in the ordinary course of business, (b) neither Seller nor any of the Seller Affiliates has taken any action that, if taken after the date of this Agreement, would constitute a breach of Section 6.1 and (c) there has been no change, effect, event, occurrence or state of facts that would reasonably be expected to have a Business Material Adverse Effect.

(m) **Compliance with Applicable Laws**

- (i) The Business has been, and is being conducted, in compliance in all material respects with all applicable Laws. There are no Proceedings or investigations pending or, to the Knowledge of Seller, threatened against Seller or any of the Seller Affiliates alleging that the Business is or was in violation of any applicable Law and neither Seller nor any of the Seller Affiliates received any written notice from a Governmental Entity of any claim of a violation of any applicable Law.
- (ii) In operating the Business, Seller and its Affiliates, directors, officers, agents and employees have not (A) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity or (B) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other federal, foreign or state anti-corruption or anti-bribery Law or requirement applicable to the Business.
- (iii) Neither Seller nor any of its Subsidiaries, Affiliates, directors, officers, employees, agents or distributors (A) is in violation of, or has violated, any Sanctions; (B) is or has been a Restricted Person or otherwise owned or controlled, either directly or indirectly, by a Restricted Person; (C) has engaged in any transaction or conduct that would be likely to result in becoming a Restricted Person; or (D) has conducted or is conducting, either directly or indirectly, any business dealings with or for the benefit of, or has been or is otherwise involved in any business with, any Restricted Person or any country or territory subject to country-wide or territory-wide Sanctions.

- (iv) None of the Transferred Assets are or have been subject to any freeze, prohibition, restriction or block under or pursuant to any Sanctions.
- (v) The use or ownership of the Transferred Assets and the operation or conduct of the Business have been at all times in compliance with applicable Money Laundering Law. There are no Proceedings or investigations pending or, to the Knowledge of Seller, threatened against Seller or any of the Seller Affiliates alleging that the Business is or was in violation of any Money Laundering Law and neither Seller nor any of the Seller Affiliates has received any written notice from a Governmental Entity of any claim of a violation of any Money Laundering Law.

(n) **Environmental Matters**

Seller and each of the Seller Affiliates conduct the Business in compliance in all material respects with all Environmental Laws. There are no pending or, to the Knowledge of Seller, threatened Proceedings against Seller or any of the Seller Affiliates alleging that the Business is in violation of any Environmental Law. Neither Seller nor any of the Seller Affiliates is conducting, nor is required to or has received any written notice asserting that it is or may be required to conduct, any investigation, cleanup, remediation or similar activities with respect to a release of Hazardous Substances at any of the Leased Real Property, any former property, any adjacent property or third party site to which Seller or any of the Seller Affiliates sent Hazardous Substances. Seller and each of the Seller Affiliates has made available to Purchaser true and complete copies of all material environmental reports, environmental site assessments, studies or similar reports resulting from the investigation or assessment of the environmental conditions of the Leased Real Property.

(o) **Employee Benefit Plans; Employment Matters**

- (i) Section 4(o)(i) of the Disclosure Schedule includes a list of each Seller Benefit Plan. Seller has made available to Purchaser copies of each current Seller Benefit Plan document, including all amendments thereto (or a written summary thereof in the case of an unwritten Seller Benefit Plan).
- (ii) Each Seller Benefit Plan has been maintained, operated and administered in all material respects in accordance with its terms, any related documents and agreements and applicable Law (including ERISA and the Code). Each Seller Benefit Plan that is intended to qualify for favorable tax treatment is so qualified and, to the Knowledge of Seller, no circumstance exists that could result in revocation of such tax qualification.
- (iii) Neither Seller nor any ERISA Affiliate has ever maintained, contributed to, or been required to contribute to, (i) any “multiemployer plan” (within the meaning of Section 3(37) of ERISA), (ii) any “multiple employer plan” (within the meaning of Section 413 of the Code) or (iii) any “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA.
- (iv) There are no pending audits or investigations by any Governmental Entity involving any Seller Benefit Plan, and no threatened or pending claims (except for individual claims for benefits payable in the normal operation of the Seller Benefit Plans) or Proceedings involving any Seller Benefit Plan, any fiduciary thereof or service provider thereto, nor to the Knowledge of Seller is there any basis for any such claim or Proceeding.

- (v) No Seller Benefit Plan provides benefits, including death or medical benefits, beyond termination of service or retirement other than (i) coverage mandated by Law or (ii) death or retirement benefits under a Seller Benefit Plan qualified under Section 401(a) of the Code.
- (vi) Seller's execution of, and performance of the transactions contemplated by this Agreement will not either alone or in connection with any other event(s) (i) result in any payment becoming due to any current or former employee, director, officer or independent contractor of Seller or any of its Affiliates, (ii) increase any amount of compensation or benefits otherwise payable under any Seller Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any benefits under any Seller Benefit Plan, (iv) require any contributions or payments to fund any obligations under any Seller Benefit Plan or (v) limit the right to merge, amend or terminate any Seller Benefit Plan.
- (vii) Each Seller Benefit Plan that constitutes a "non-qualified deferred compensation plan" within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid pursuant to any such benefit plan is subject to tax under Section 409A of the Code.
- (viii) Seller and each ERISA Affiliate have, for purposes of each Seller Benefit Plan and for all other purposes, correctly classified all individuals performing services for Seller as common law employees, leased employees or independent contractors, as applicable.
- (ix) Neither Seller nor any of the Seller Affiliates has ordered or implemented any plant closing, mass layoff or other similar action requiring the provision of notice under the WARN Act.
- (x) Each of Seller and each of the Seller Affiliates is in compliance in all material respects with all applicable Laws relating to labor, employment and employment practices, including all Laws relating to the terms and conditions of employment, equal employment opportunity, non-discrimination, immigration, wages, hours, working time, benefits, collective bargaining, classification of individuals as employees and independent contractors, classification of employees as exempt and non-exempt under the Fair Labor Standards Act and similar state and local Laws, the payment of social security and similar taxes, and occupational safety and health.
- (xi) (i) Neither Seller nor any of the Seller Affiliates has been, nor is now, a party to any collective bargaining agreement or other labor contract (whether legally binding, honorary or otherwise) relating to any Business Employees, (ii) there has not been, there is not presently pending or existing, and there is not threatened, any strike, slowdown, picketing, work stoppage, or lockout involving any Business Employees; (iii) no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute by or with respect to any Business Employees; (iv) there is not pending or threatened against or affecting Seller or any Seller Affiliates, nor any Proceeding relating to or asserting the alleged violation of any Law pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board; (v) no application or petition for an election of or for certification of a collective bargaining agent, or demand for recognition by any union or other labor organization, is pending or threatened, and, to the Knowledge of Seller, there



is no union organizing campaign or activity pending or threatened with respect to any Business Employee; and (vi) no material grievance, tribunal or arbitration Proceeding is pending or threatened with respect to any Business Employees.

- (xii) No officer, agent, employee, consultant or contractor of Seller or any of the Seller Affiliates has delivered oral or written notice to Seller or any Seller Affiliates of his, her or its intention to terminate employment or engagement with Seller or any Seller Affiliates.

(p) **Insurance**

The insurance policies maintained by Seller with respect to the operation and conduct of the Business as currently in effect constitute insurance against the risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses. All such insurance policies of Seller or any of the Seller Affiliates are in full force and effect and are valid, outstanding and enforceable, and all premiums due thereon have been paid in full. Sellers have complied in all material respects with the provisions of all such policies. No insurer under any such insurance policy has cancelled or generally disclaimed liability under any such policy or indicated any intent to do so or not renew any such policy.

(q) **Sufficiency of Assets**

The Transferred Assets comprise all the assets, properties and rights used by Seller and the Seller Affiliates in the operation and conduct of the Business as currently conducted and are sufficient in all material respects to permit Purchaser and its Affiliates to operate and conduct the Business in a manner substantially consistent with the manner in which Seller and the Seller Affiliates operated and conducted the Business immediately before Closing.

(r) **Brokerage**

Seller represents, as to itself and its Affiliates, that no agent, broker, investment banker or other firm or person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except [●], whose fees and expenses will be paid by Seller.

**5. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller, as of the date of this Agreement and as of the Closing Date, as follows:

(a) **Organization and Standing**

Purchaser is an exempted company duly incorporated and validly existing under the laws of the Cayman Islands and has full legal power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as currently conducted, other than such franchises, licenses, permits, authorizations and approvals the lack of which would not reasonably be expected to have a Purchaser Material Adverse Effect.

(b) **Authority, Execution and Delivery; Enforceability**

- (i) Purchaser has the requisite corporate power and authority to execute this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to perform its obligations under, and consummate the transactions contemplated to be consummated by it by this Agreement and the Ancillary Agreements. Purchaser has taken all corporate action required by its organizational documents to authorize the execution and delivery of this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to authorize the consummation of the transactions contemplated to be consummated by it by this Agreement and such Ancillary Agreements.
- (ii) Purchaser has duly executed and delivered this Agreement and prior to the Closing will have duly executed and delivered each Ancillary Agreement to which it is, or is specified to be, a party, and this Agreement constitutes, and each Ancillary Agreement to which it is, or is specified to be, a party will upon execution and delivery constitute, its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject, as to enforceability, to the effect of any applicable Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfer or similar laws relating to or affecting creditors' rights generally and to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) **No Conflicts or Violations; No Consents or Approvals Required**

- (i) The execution and delivery by Purchaser of this Agreement do not, the execution and delivery by Purchaser of each Ancillary Agreement to which it is, or is specified to be, a party will not, and the consummation of the transactions contemplated to be consummated by it by this Agreement and such Ancillary Agreements will not, conflict with or result in any breach of or constitute a default under, or result in the creation of any Lien upon any of the properties or assets of Purchaser under, any provision of (i) the organizational documents of Purchaser, (ii) any Contract to which Purchaser or any of its Subsidiaries is a party or by which any of their respective properties or assets is bound or (iii) any Judgment or applicable Law applicable to Purchaser or any of its Subsidiaries or their respective properties or assets, other than, in the case of clauses (ii) and (iii) above, any such items that would not reasonably be expected to have a Purchaser Material Adverse Effect.
- (ii) No consent, approval or authorization of, or registration, declaration or filing with, any Governmental Entity is required to be obtained or made by or with respect to Purchaser or any of its Subsidiaries in connection with the execution, delivery and performance of this Agreement or the consummation of the Acquisition, other than (i) the Bankruptcy Court's entry of the Sale Order, (ii) compliance with and filings and notifications under Environmental Laws, (iii) those that may be required solely by reason of Seller's (as opposed to any third party's) participation in the Acquisition and the other transactions contemplated hereby and by the Ancillary Agreements and (iv) those the failure of which to obtain or make would not reasonably be expected to have a Purchaser Material Adverse Effect.

(d) **Proceedings**

There are no (i) outstanding Judgments against Purchaser or any of its Subsidiaries, (ii) Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser or any

of its Subsidiaries or (iii) investigations by any Governmental Entity that are pending or, to the knowledge of Purchaser, threatened against Purchaser or any of its Subsidiaries that, in any such case of clauses (i), (ii) and (iii), would reasonably be expected to have a Purchaser Material Adverse Effect.

(e) **Availability of Funds; Solvency**

- (i) Purchaser has (or at the Closing will have) cash available or has existing borrowing facilities which together are sufficient to enable it to consummate the Acquisition and the other transactions contemplated by this Agreement and the Ancillary Agreements.
- (ii) As of the Closing and immediately after consummating the Acquisition and the other transactions contemplated by this Agreement and the Ancillary Agreements, assuming the accuracy of the representations and warranties of Seller set forth in this Agreement, Purchaser will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets (including both tangible and intangible assets) or because the present fair salable value of its assets (including both tangible and intangible assets) will be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business, including the Business, or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

(f) **Brokerage**

Purchaser represents, as to itself and its Affiliates, that no agent, broker, investment banker or other firm or person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except Silverpeak LLP, whose fees and expenses will be paid by Purchaser or its Affiliates.

**6. COVENANTS**

**6.1 Covenants Relating to Conduct of the Business**

Except for matters (a) set forth in Section 6.1 of the Disclosure Schedule, (b) expressly agreed to by Purchaser in writing or (c) required pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, from the date of this Agreement to the Closing Date, Seller shall, and shall cause each of the Seller Affiliates to, conduct the Business in the ordinary course consistent with past practice and preserve the business relationships with customers, suppliers, distributors and others with whom Seller and each of the Seller Affiliates deals with in connection with the conduct of the Business. In addition, except as set forth in Section 6.1 of the Disclosure Schedule, Seller shall not, and shall cause each of the Seller Affiliates not to, do any of the following in connection with the Business from the date of this Agreement to the Closing Date without the prior written consent of Purchaser (which consent shall not be unreasonably withheld):

- (i) subject any of the Transferred Assets to any Lien other than Permitted Liens;
- (ii) waive any claims or rights of material value that relate primarily to the Business or the Transferred Assets;

- (iii) sell, lease, sublease, license, sublicense or otherwise dispose of any Transferred Asset;
- (iv) fail to maintain or protect any Transferred Intellectual Property or Transferred Technology or grant any person a license in respect of any Transferred Intellectual Property or Transferred Technology;
- (v) fail to pay or otherwise satisfy (except if being contested in good faith) any material accounts payable, liabilities or obligations of the Business when due and payable, other than to the extent that any such failure arises from Seller's compliance with its obligations under this Section 6.1;
- (vi) engage in any dispute with, or otherwise conduct any discussions or negotiations with, a customer or supplier with respect to any Transferred Contract (or Contract that would be a Transferred Contract), or enter into any new Contract that would be a Transferred Contract;
- (vii) extend, modify, terminate, renew, fail to renew or waive a material right under, any Transferred Contract;
- (viii) incur or assume any liabilities, obligations or indebtedness for borrowed money (other than under the DIP Financing Agreement) primarily of the Business or guarantee any such liabilities, obligations or indebtedness;
- (ix) make any change in any method of accounting or accounting practice or policy that is applicable to the Business other than those required by GAAP or required by applicable Law;
- (x) enter into any lease of real property that relates to the Business;
- (xi) change in any manner the compensation of, or agree to provide additional benefits to, or enter into or amend any employment, consulting, severance or other similar agreement with, any Business Employee or any other individual, except in the ordinary course of business consistent with past practice;
- (xii) commence any Proceeding relating to or involving the Business or the Transferred Assets, other than the Bankruptcy Case;
- (xiii) allow any Transferred Permit terminate, expire or lapse;
- (xiv) maintain insurance coverage in amounts adequate to cover the reasonably anticipated risks of the Business and the Transferred Assets;
- (xv) make any representation or commitment to any of the Business Employees with respect to whether Purchaser will offer employment to any such employee or any intention of Purchaser with respect thereto;
- (xvi) comply in all material respects with all Laws applicable to the Business; and
- (xvii) agree, whether in writing or otherwise, to do any of the foregoing.

## **6.2 Employees**

### **(a) Continuation of Employment**

Subject to Seller's compliance with its obligations pursuant to this Section 6.2, Purchaser shall, or shall procure that a Purchaser Designee shall, offer employment effective at Closing to each Business Employee in accordance with this Section 6.2 no later than 5 Business Days prior to Closing (each Business Employee who accepts Purchaser's offer of employment is referred to herein as a **Transferred Employee**). Purchaser's offer of employment shall be on such terms and conditions as Purchaser shall determine in its sole discretion to be entered into directly between each such Business Employee and Purchaser or Purchaser Designee, subject to compliance with applicable Law (including the Transfer Regulations); *provided, however*, that Purchaser's offer of employment to each Business Employee set forth in Section 8.1(h) of the Disclosure Schedule shall include such terms and conditions reasonably equivalent or superior to the terms and conditions applicable to their employment by Seller. The Seller shall, and shall cause the Seller Affiliates to, use their reasonable best efforts to assist Purchaser and Purchaser Designee in securing acceptance of such offers to the Business Employees. Without limiting the foregoing, Seller shall be responsible for the payment of any severance, change in control payment, transaction bonus or other benefits (whether contractual, customary or discretionary) that become due to any Business Employee, Former Employee, consultant or independent contractor by Seller or any of its Affiliates as a result of the transactions contemplated by this Agreement. Seller shall provide all information about the employment of each Business Employee as requested by Purchaser no later than 30 calendar days prior to Closing (and in any event within seven calendar days of being requested to do so by Purchaser in writing) to enable Purchaser to make or procure such offers of employment and in compliance with the Seller or Seller Affiliates' obligations under the Transfer Regulations.

(b) **Administration**

Following the date of this Agreement, Seller and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 6.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverages (whether contractual, customary or discretionary) (except to the extent prohibited by applicable Law), and in obtaining any governmental approvals required hereunder.

(c) **No Third Party Beneficiaries**

Notwithstanding anything to the contrary in this Agreement, neither Purchaser nor any of its Affiliates shall be required to continue any specific employee benefit plans. The provisions of this Section 6.2 are for the sole benefit of the parties to this Agreement and nothing herein, expressed or implied, is intended to be construed to (i) constitute an amendment to any of the compensation and benefits plans maintained for or provided to Business Employees prior to or following the Closing or (ii) confer upon or give to any person, other than the parties hereto and their respective permitted successors and assigns, any legal or equitable or other rights or remedies under or by reason of any provision of this Agreement.

(d) **Transfer Regulations**

Seller shall, and shall procure that each relevant Seller Affiliate shall, ensure that Seller and the relevant Seller Affiliates comply in all material respects with the Transfer Regulations including, without prejudice to the foregoing, complying with obligations to elect, inform and (where appropriate) consult with employee representatives of any employees (including the Business Employees) affected by the measures envisaged in Section 6.2(a).

### **6.3 Access to Information**

Seller shall, and shall cause the Seller Affiliates to, afford to Purchaser and its accountants, counsel and other representatives reasonable access, upon reasonable prior notice during normal business hours during the period prior to the Closing, to (a) personnel, properties, books, Contracts, commitments and records relating to the Business (other than the Excluded Assets) and (b) any Tax Returns to the extent relating to the Business; *provided, however*, that in each case such access is in compliance with applicable Law and does not unreasonably disrupt the normal operations of Seller or any of the Seller Affiliates relating to the Business.

### **6.4 Confidentiality**

Unless mutually agreed in writing, Purchaser and Seller each shall hold, in strict confidence, except to comply with its duties as a debtor and debtor in possession or if compelled to disclose by judicial or administrative process or, in the opinion of legal counsel, by other requirements of law, all confidential information concerning any other party hereto furnished by such other party or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (a) available to such party on a non-confidential basis prior to its disclosure by such other party, (b) in the public domain through no fault of such party or (c) later lawfully acquired from other sources by such party), and no party shall release or disclose such information to any other person, except to its auditors, attorneys, financial advisors, bankers, and other consultants and advisors who shall be advised of the provisions of this Section 6.4. Notwithstanding the foregoing, either party may disclose confidential information to their respective officers, directors, employees, agents and representatives who have a need to know such information in furtherance of the transactions contemplated by this Agreement and the Ancillary Agreements and Seller shall be entitled to disclose, after consultation with the other party to the extent legally permissible and practicable under the circumstances (x) any information required to be disclosed by Seller to the Bankruptcy Court, the an Appointee, parties in interest in the Bankruptcy Case, other Persons bidding on assets of Sellers or (y) any information required to be disclosed by Seller pursuant to any applicable Law (including the Bankruptcy Code). Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by any other party if it exercises the same care as it takes to preserve confidentiality for its own similar information.

### **6.5 Reasonable Best Efforts**

On the terms and subject to the conditions of this Agreement, each of Seller and Purchaser shall use its reasonable best efforts to cause the Closing to occur as promptly as practicable and in any event prior to the date set forth in Section 9.1(a)(vi)(B), including taking any and all reasonable actions necessary to comply promptly with all legal requirements that may be imposed on it or any of its Affiliates with respect to the Closing. Each of Seller and Purchaser shall promptly cooperate with the reasonable requests of the other party in seeking to satisfy any such legal requirements imposed by any Governmental Entity. Seller and Purchaser shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing.

### **6.6 No Solicitation**

Seller agrees to immediately terminate, and to cause its Affiliates, representatives, agents, officers, employees, attorneys and accountants to terminate, all existing negotiations or activities concerning a possible sale of the Business with any party other than Purchaser, its Affiliates and its and their respective representatives, other than in connection with the Auction and in accordance with the

procedures set forth in the Bid Procedures Order. Seller shall not, and shall not authorize, permit or direct any of its Affiliates or any of its or their respective representatives to, directly or indirectly, (a) solicit the submission of proposals, inquiries or offers relating to, (b) enter into discussions or negotiations with, or provide any confidential information to, any person, or (c) enter into any agreement or agreement in principle, in each case in connection with any divestiture or similar transaction involving the Business (other than, with respect to Purchaser or its Affiliates, the Acquisition) or the Transferred Assets (other than Inventory and obsolete equipment in the ordinary course of business or, with respect to Purchaser or its Affiliates, the Acquisition), other than in connection with the Auction and in accordance with the procedures set forth in the Bid Procedures Order.

## **6.7 Motions and Orders**

Seller shall promptly provide Purchaser with proposed drafts of all documents, motions, orders or pleadings that Seller proposes to file with the Bankruptcy Court which relate to the approval of this Agreement, the Transferred Assets, the Assumed Liabilities, the Transferred Contracts or the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, or any provision therein or herein, and shall provide Purchaser and its counsel with reasonable opportunity to review and comment on such documents, motions, orders or pleadings prior to filing with the Bankruptcy Court.

## **6.8 Insurance**

Subject to the terms of the DIP Financing Agreement, Seller shall maintain until Closing all existing insurance, at its sole cost and expense. If, between the date hereof and the Closing, any of the Transferred Assets shall be damaged or destroyed by fire, theft, vandalism or other casualty event, or become subject to any condemnation or eminent domain proceeding, Sellers shall promptly notify Purchaser in writing of such fact and Purchaser shall have the option to (a) acquire such Transferred Asset on an "as is" basis and take an assignment from Seller of any and all insurance proceeds payable to Seller or of its Affiliates in respect of such event, (b) elect to exclude such Transferred Asset from this Agreement or (c) if such event would have a Business Material Adverse Effect, terminate this Agreement and the transactions contemplated hereby.

## **6.9 Cure Amounts**

Seller shall provide Purchaser with the proposed Cure Costs for each Transferred Contract and Transferred Lease no later than three Business Days before sending any notice of proposed Cure Costs amount with respect to such Transferred Contract or Transferred Lease.

## **6.10 Updates to Disclosure Schedules**

No later than 10 Business Days prior to the date of the Auction, Seller shall deliver to Purchaser updates to Sections 1, 2.1(a)(i), 2.1(a)(ii), 2.1(a)(iii), 2.1(a)(iv), 2.1(a)(v), 2.1(a)(vi) or 2.1(a)(xiv) of the Disclosure Schedule consisting solely of additional items relating primarily to the Business to be disclosed in each or any such Section (such Disclosure Schedule as modified, the **Updated Schedule**). At any time and from time to time following delivery of the Updated Schedule and until the Closing Date, Purchaser may, at its election and in its sole discretion, add, remove, modify or supplement any item in Sections 1, 2.1(a)(i), 2.1(a)(ii), 2.1(a)(iii), 2.1(a)(iv), 2.1(a)(v), 2.1(a)(vi), 2.1(a)(xiv), 2.1(b)(i), 2.3(a)(i) or 2.3(a)(ii) of the Updated Schedule, including by adding any item to Section 2.1(b)(i) of the Disclosure Schedule. Purchaser and Seller acknowledge and agree that any item from the Updated

Schedule moved by Purchaser to Section 2.1(b)(i) of the Disclosure Schedule will thereafter be an Excluded Asset for purposes of this Agreement.

## 7. BANKRUPTCY MATTERS

### 7.1 Approval of Bid Protections and Overbid Protection

Subject to the entry of the Bid Procedures Order, in consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation hereof and the identification and quantification of assets of Seller, Seller shall pay to Purchaser promptly upon the Effective Time of termination of this Agreement in accordance with, and only to the extent provided in, the provisions of Section 9.3, the Termination Fee and Expense Reimbursement. In addition, the Bid Procedures Order shall provide for an initial overbid equal to no less than: (a) an amount equal to (i) the Cash Consideration, the DIP Credit Bid and Release and the Prepetition Credit Bid and Release, if any, and (ii) cash consideration in an amount equal to the Termination Fee and Expense Reimbursement, plus (b) \$250,000 in cash, and minimum bid increments thereafter of \$250,000 (the **Overbid Protection** and the **Overbid Protection** together with the Termination Fee and Expense Reimbursement, the **Bid Protections**). The obligations of Seller to pay the Bid Protections shall (x) be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (y) not be subordinate to any other administrative expense claim against Seller and shall be carved out from any security granted to secure financing provided in favor of Seller, or any adequate protection granted under sections 363 or 364 of the Bankruptcy Code, and (z) survive the termination of this Agreement in accordance with Section 9.2. The Bid Procedures Order shall approve the Bid Protections as set forth in this Section 7.1.

### 7.2 Qualified Competing Bid and Other Matters

- (a) On the Petition Date, Seller shall file with the Bankruptcy Court an application or motion, in form and substance acceptable to Purchaser, seeking approval of (i) the Bid Procedures Order, (ii) this Agreement (a true and complete copy of which shall be attached to such application or motion without Exhibits or Schedules) and Seller's authority to enter into this Agreement, and (iii) the Sale Order.
- (b) This Agreement and the transactions contemplated hereby are subject to Seller's right and ability to consider higher or better bids with respect to the Business and the Transferred Assets that constitute qualified bids in accordance with the Bid Procedures Order (each, a **Qualified Competing Bid**). If Qualified Competing Bids are received, an Auction shall be conducted.
- (c) If Purchaser is not the prevailing bidder at the conclusion of such Auction (such prevailing bidder, the **Prevailing Bidder**), Purchaser may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of the Prevailing Bidder (the **Outside Back-up Date**); *provided, however*, that notwithstanding the foregoing, in no event shall the Outside Back-up Date be later than 60 days after the Petition Date. Following the Sale Hearing and prior to the Outside Back-up Date, if Seller fails to consummate the Alternative Transaction with the Prevailing Bidder as a result of a breach or failure to perform on the part of such Prevailing Bidder, and Purchaser has kept its bid to consummate the transactions as contemplated by this Agreement, then at such time Purchaser will be deemed the Prevailing Bidder, and Seller shall, without further notice, consent or approval, and without further Order



of the Bankruptcy Court, consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with Purchaser.

- (d) Following completion of the Auction, if Purchaser is the Prevailing Bidder, Seller shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any person in connection with any sale, assignment or other disposition of the Transferred Assets.

## **8. CONDITIONS TO CLOSING**

### **8.1 Conditions to Obligations of Purchaser**

The obligation of Purchaser to purchase and pay for the Transferred Assets and assume the Assumed Liabilities is subject to the satisfaction (or waiver in writing by Purchaser) on or prior to the Closing Date of the following conditions:

#### **(a) Representations and Warranties**

(i) The Specified Representations of Seller shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), and (ii) all other representations and warranties of Seller in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), except in the case of clause (ii) for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and would not reasonably be expected to have a Business Material Adverse Effect. For purposes of Section 8.1(a)(ii), any representation or warranty made by Seller this Agreement that is qualified by reference to “Business Material Adverse Effect”, “material” or other materiality qualifications (or correlative terms) shall be read as if such qualifications were not present. Purchaser shall have received a certificate dated as of the Closing Date signed by an authorized officer of Seller as to the satisfaction of the foregoing condition.

#### **(b) Performance of Obligations of Seller**

Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller by the time of the Closing. Purchaser shall have received a certificate dated as of the Closing Date signed by an authorized officer of Seller as to the satisfaction of the foregoing condition.

#### **(c) No Injunctions or Restraints**

No applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect and no Proceeding initiated by a Governmental Entity shall be pending seeking any of the same.

(d) **Ancillary Agreements**

Seller or the applicable Seller Affiliate shall have duly executed and delivered the Ancillary Agreements.

(e) **No Business Material Adverse Effect**

During the period from the date of this Agreement until the Closing, no event shall have occurred that has had or could reasonably be expected to have, individually or in the aggregate, a Business Material Adverse Effect.

(f) **Bid Procedures and Sale Orders**

The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order in form and substance reasonably acceptable to Purchaser and that such Orders shall be Final Orders.

(g) **Required Consents**

Seller shall have delivered to Purchaser the consents set forth in Section 8.1(g) of the Disclosure Schedule (the **Required Consents**), in each case in form and substance reasonably satisfactory to Purchaser.

(h) **Key Employees**

The Business Employees set forth in Section 8.1(h) of the Disclosure Schedule shall have accepted offers of employment extended in accordance with Section 6.2 by Purchaser or one of the Purchaser Designees.

(i) **Intellectual Property**

(A) The Transferred Intellectual Property shall be valid, subsisting, enforceable and otherwise in good standing, (B) no Transferred Intellectual Property shall be involved in any interference, reissue, reexamination, review, opposition or cancellation proceeding, and no action is or has been threatened with respect to the Transferred Intellectual Property, and (C) Seller shall have maintained and protected the Transferred Intellectual Property and Transferred Technology, and shall not have granted any person a license in respect of any Transferred Intellectual Property or Transferred Technology.

(j) **DIP Representations and Warranties**

All representations and warranties in Article III of the DIP Financing Agreement shall be, as of the Closing Date as though made on the Closing Date, true and correct in all material respects and the Borrowers shall have performed or complied in all material respects with all obligations and covenants required by the DIP Financing Agreement to be performed or complied with by the Borrowers by the time of the Closing. For purposes of this Section 8.1(j), any representation or warranty in Article III of the DIP Financing Agreement that is qualified by reference to "Material Adverse Effect", "material" or any other materiality qualifications (or correlative terms) shall be read as if such qualifications were not present. Purchaser shall have received a certificate dated as of the Closing Date signed by an authorized representative of the Borrowers as to the satisfaction of the foregoing condition.

(k) **Non-Debtor Release**

Each Seller Affiliate that is not one of the Debtors shall have delivered to Purchaser an unconditional waiver and release, in form and substance reasonably satisfactory to Purchaser, granting to Purchaser an absolute and unconditional waiver and release of any right, title or interest in any of the Transferred Assets held by such Seller Affiliate and to any Claim relating thereto.

**8.2 Conditions to Obligations of Seller**

The obligation of Seller to, or to cause the Seller Affiliates to, sell, transfer, assign and deliver the Transferred Assets is subject to the satisfaction (or waiver by Seller) on or prior to the Closing Date of the following conditions:

(a) **Representations and Warranties**

(i) The Specified Representations of Purchaser shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), and (ii) all other representations and warranties of Purchaser in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), except in the case of clause (ii) for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and would not reasonably be expected to have a Purchaser Material Adverse Effect. For purposes of Section 8.2(a)(ii), any representation or warranty made by Purchaser in this Agreement that is qualified by reference to "Purchaser Material Adverse Effect". "material" or other materiality qualifications (or correlative terms) shall be read as if such qualifications were not present. Seller shall have received a certificate dated as of the Closing Date signed by an authorized officer of Purchaser as to the satisfaction of the foregoing condition.

(b) **Performance of Obligations of Purchaser**

Purchaser shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Purchaser by the time of the Closing. Seller shall have received a certificate dated as of the Closing Date signed by an authorized officer of Purchaser as to the satisfaction of the foregoing condition.

(c) **No Injunctions or Restraints**

No applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect and no proceeding initiated by a Governmental Entity shall be pending seeking any of the same.

(d) **Bid Procedures and Sale Orders**

The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order and such Orders shall not have been reversed, vacated or stayed.

### **8.3 Frustration of Closing Conditions**

Neither Purchaser nor Seller may rely on the failure of any condition set forth in this Article 8 to be satisfied if such failure was caused by such party's failure to act in good faith or to use its reasonable best efforts to cause the Closing to occur, as required by Section 6.5.

## **9. TERMINATION; EFFECT OF TERMINATION**

### **9.1 Termination**

- (a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the Acquisition and the other transactions contemplated by this Agreement abandoned at any time prior to the Closing:
  - (i) by mutual written consent of Seller and Purchaser;
  - (ii) by Seller or Purchaser, if the Closing does not occur on or prior to the date that is 90 days after the Petition Date;
  - (iii) by Seller or Purchaser, if Seller has entered into an Alternative Transaction;
  - (iv) upon the consummation of any Alternative Transaction;
  - (v) by Seller, if:
    - (A) (x) there is a material breach of any representation or warranty of Purchaser or any covenant or agreement to be complied with or performed by Purchaser pursuant to the terms of this Agreement, (y) 15 days have elapsed since the receipt by Purchaser of a written notice by Seller of such breach and (z) Purchaser shall have failed to cure such breach within such 15-day period;
    - (B) there is a failure of a condition set forth in Section 8.2 to be satisfied by Closing and such condition has not been waived in writing by Purchaser;
  - (vi) by Purchaser, if:
    - (A) (x) there is a material breach of any representation or warranty of Seller or any covenant or agreement to be complied with or performed by Seller pursuant to the terms of this Agreement, (y) 15 days have elapsed since the receipt by Seller of a written notice by Purchaser of such breach and (z) Seller shall have failed to cure such breach within such 15-day period;
    - (B) there is a failure of a condition set forth in Section 8.1 to be satisfied by Closing and such condition has not been waived in writing by Purchaser;
    - (C) Seller does not comply with the terms of the Bid Procedures Order;

- (D) (x) Seller seeks to have the Bankruptcy Court enter an Order dismissing or converting the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code or appointing an Appointee or (y) any Order of dismissal of the Bankruptcy Case, conversion of the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code or appointment of an Appointee is entered for any reason and is not reversed or vacated within 14 days from the entry thereof;
- (E) the Bankruptcy Court has not entered the Bid Procedures Order within 21 days of the Petition Date, or, following its entry, the Bid Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of Purchaser;
- (F) (x) the Bankruptcy Court has not held the Sale Hearing and entered the Sale Order within [75] days of the Petition Date or (y) the Sale Order has not become a Final Order within [90] days of the Petition Date;
- (G) the Sale Order shall have been stayed, vacated, modified or supplemented without the prior written consent of Purchaser; or
- (H) the loans and other obligations of the DIP Financing Agreement have become due and payable, whether at maturity, by acceleration or otherwise;

*provided, however*, that the party seeking termination pursuant to this Section 9.1(a) is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

- (b) In the event of termination by Seller or Purchaser pursuant to this Section 9.1, the terminating party shall give immediate written notice thereof to the other party and the transactions contemplated by this Agreement shall thereafter be terminated, without further action by any party. If the transactions contemplated by this Agreement are terminated as provided herein:
  - (i) all confidential information received by Seller, its directors, officers, employees, agents, representatives or advisors with respect to the businesses of Purchaser and its Affiliates shall be treated in accordance with Section 6.4; and
  - (ii) all confidential information received by Purchaser, its directors, officers, employees, agents, representatives or advisors with respect to the businesses of Seller and its Affiliates (including with respect to the Business) shall be treated in accordance with Section 6.4.

## **9.2 Effect of Termination**

If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in Section 9.1, this Agreement will become null and void and of no further force and effect, except for the provisions of (a) Section 6.4 relating to the obligation of Purchaser to keep confidential certain information and data obtained by it from Seller or Seller's representatives, (b) Section 12.3 relating to certain expenses, (c) Section 9.1, this Section 9.2 and Section 9.3, (d) Section 11.1 relating to publicity, (e) Section 7.1 relating to Bid Protections and (f) Section 11.7. Nothing in this Section 9.2 shall (A) release any party from any liability for any breach by such party of the terms, conditions, covenants and other provisions of this Agreement or (B) prior to the termination of this Agreement, impair the

right of any party to compel specific performance by any other party of its obligations under this Agreement in accordance with Section 12.12.

### 9.3 Termination Fee

If Seller consummates an Alternative Transaction or if this Agreement is terminated pursuant to Section 9.1(a)(iii) or (iv), Seller shall pay, or shall cause to be paid, to Purchaser the Termination Fee and Expense Reimbursement by wire transfer of immediately available funds no later than two Business Days following the effective date of such termination. Seller and Purchaser acknowledge and agree that (a) this Section 9.3 is an integral part of this Agreement and the transactions contemplated hereby, (b) the Termination Fee represents a reasonable estimate of the losses that would be suffered by Purchaser as result of such termination of this Agreement and (c) any amounts payable under this Section 9.3 do not constitute a penalty. If the Termination Fee and Expense Reimbursement is payable but not timely paid by Seller as required by this Section 9.3, Purchaser shall be entitled to seek and receive, in addition to the Termination Fee and Expense Reimbursement, interest thereon and Purchaser's costs and expenses incurred in the collection thereof (including reasonable attorneys' fees and expenses). Notwithstanding the foregoing, Purchaser may (x) pursue the remedies permitted by Section 12.12 at any time prior to a valid termination of this Agreement by Purchaser pursuant to Section 9.1 and, (y) in the event of a breach by Seller of the terms, conditions, covenants or other provisions of this Agreement, pursue its actual damages arising from such breach as provided in the last sentence of Section 9.2 in lieu of receiving the Termination Fee and Expense Reimbursement.

## 10. TAX MATTERS

### 10.1 Purchase Price Allocations

- (a) At least seven days prior to the Closing Date, Purchaser shall provide Seller a proposed allocation (the **Allocation**) of the total consideration (including liabilities assumed and any other amounts required to be taken into account under applicable Law) among the Transferred Assets, as well as with a single amount for all of the Transferred Assets of each of Seller and each of the Seller Affiliates. The Allocation will be supported by a valuation report from a nationally recognized appraiser selected by Purchaser (the **Valuation Firm**). The Allocation will become final and binding 20 days after Purchaser provides the Allocation to Seller, unless Seller objects on the grounds that there is no reasonable basis for the Allocation (in which case, Seller shall propose an allocation). If the parties cannot agree on the Allocation, each party shall be entitled to use its own valuation.
- (b) If the parties agree on the Allocation or the Allocation becomes final and binding pursuant to the penultimate sentence of Section 10.1(a), Seller (and its Affiliates) and Purchaser (and its Affiliates) agree to file all Tax Returns consistent with the final version of the Allocation described in Section 10.1(a) unless otherwise required to do so by applicable Law.

### 10.2 Transfer Taxes

Seller shall pay all Transfer Taxes and timely prepare and file, or cause to be timely prepared and filed, filings, returns, reports and forms as may be required in connection with Seller's payment of Transfer Taxes; *provided, however*, that Purchaser and its Affiliates shall join in the execution of any such filings, returns, reports and forms to the extent required by applicable Law. Seller shall use reasonable efforts to avail itself of any available exemptions from any such Transfer Taxes and Purchaser shall use

commercially reasonable efforts to cooperate with Seller in providing any information and documentation that may be necessary to obtain such exemption.

### **10.3 Cooperation**

Seller and Purchaser agree to retain all records relating to the finances and Taxes of the Transferred Assets for all Pre-Closing Tax Periods until the expiration of the statutes of limitation (including any extensions thereof) for the taxable period or periods to which such records relate. Seller and Purchaser shall provide each other with such information and assistance as is reasonably necessary, including access to records and personnel, for the preparation of any Tax Returns or for the defense of any Tax claim or assessment, whether in connection with an audit or otherwise. Seller and Purchaser shall reasonably cooperate in obtaining any clearance certificates or similar documents from any applicable Taxing Authority that are required or permitted with respect to the transactions contemplated by this Agreement.

## **11. ADDITIONAL AGREEMENTS**

### **11.1 Publicity**

Each of Purchaser and Seller shall consult with the other to the extent reasonably practicable with respect to any press release that such party or any of its Affiliates chooses to make upon announcement of the execution of this Agreement. Other than any such initial Purchaser or Seller (or Purchaser Affiliate or Seller Affiliate) press release, from the date of this Agreement through the Closing Date, neither party or any of its Affiliates shall make any other public press release or announcement concerning the transactions contemplated hereby without the prior consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as such press release or announcement may be required by Law or the rules or regulations of any United States or foreign securities exchange, in which case the party required to make the release or announcement shall, to the extent practicable, use commercially reasonable efforts to allow the other party reasonable time to comment on such release or announcement in advance of such issuance; *provided, however*, that (a) each of the parties and its Affiliates may make internal announcements to their respective employees that are consistent with the parties' prior public disclosures regarding the transactions contemplated hereby and (b) each of the parties or its Affiliates may issue one or more releases or announcements (including filing this Agreement and any Ancillary Agreement with the United States Securities Exchange Commission or other foreign securities exchange) in connection with the execution of this Agreement, so long as such party permits the other party reasonable notice and time to review any such release or announcement in advance of such issuance or filing.

### **11.2 Records**

Purchaser recognizes that certain records may contain information relating to Subsidiaries, divisions or businesses of Seller and its Affiliates other than the Business and that Seller and its Affiliates, subject to Seller's obligations under Section 11.5, may retain copies thereof.

### **11.3 Refunds and Remittances**

- (a) After the Closing, if Seller or any of its Affiliates receive any refund or other amount which is a Transferred Asset or is otherwise properly due and owing to Purchaser in accordance with the terms of this Agreement, Seller promptly shall remit, or shall cause to be remitted, such amount to Purchaser at the address set forth in Section 12.4. After the Closing, if Purchaser or any of its

Affiliates receive any refund or other amount which is an Excluded Asset or is otherwise properly due and owing to Seller or any of its Affiliates in accordance with the terms of this Agreement, Purchaser promptly shall remit, or shall cause to be remitted, such amount to Seller at the address set forth in Section 12.4.

- (b) After the Closing, if Purchaser or any of its Affiliates receive any refund or other amount which is related to claims (including workers' compensation), litigation, insurance or other matters for which Seller is responsible hereunder, and which amount is not a Transferred Asset, or is otherwise properly due and owing to Seller in accordance with the terms of this Agreement, Purchaser promptly shall remit, or cause to be remitted, such amount to Seller at the address set forth in Section 12.4. After the Closing, if Seller or any of its Affiliates receive any refund or other amount which is related to Claims, litigation, insurance or other matters for which Purchaser is responsible hereunder, and which amount is not an Excluded Asset, or is otherwise properly due and owing to Purchaser in accordance with the terms of this Agreement, Seller promptly shall remit, or cause to be remitted, such amount to Purchaser at the address set forth in Section 12.4.

#### **11.4 Return of Confidential Information**

Promptly after the Closing, Seller (or its financial advisor, as applicable) shall request in writing the return or destruction of all confidential information of the Business provided to any person in connection with such other person's interest in a possible transaction to acquire the Business (or any portion thereof).

#### **11.5 Post-Closing Confidentiality**

From and after the Closing and until an Order dismissing or converting the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code is entered by the Bankruptcy Court, Seller shall, and shall cause its Affiliates to, keep confidential and protect, and not divulge, allow access to or use in any way any and all information concerning the business and affairs of the Business, including the Transferred Assets and the Assumed Liabilities, that is not generally known to the public.

#### **11.6 Further Assurances**

After the Closing, each party shall take such further actions and execute such further documents as may be reasonably necessary or reasonably requested by the other party (including with respect to information held by Seller and its agents in respect of regulatory filings for Transferred Intellectual Property) in order to effectuate the intent of this Agreement and to provide such other party in all material respects with the intended benefits of this Agreement and the Ancillary Agreements.

#### **11.7 Effect of Investigation**

The representations, warranties, covenants and agreements of any party, and any party's rights or remedies with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the party seeking such remedy (including by any of its representatives) or by reason of the fact that the such party or any of its representatives knew or should have known at any time, whether before or after the execution and delivery of this Agreement or the Closing Date that such representation or warranty is, was or might be breached or inaccurate, or that such covenant or agreement is, was or might be breached or by reason of a waiver of any condition set forth in Article 8.



## **11.8 Intellectual Property Matters; Technology License**

- (a) Not later than seven days following the date of this Agreement, Seller shall, and shall cause its Affiliates to, deliver to Purchaser (i) the complete prosecution files, including original granted patents, for all Transferred Patents in such form and medium as reasonably requested by Purchaser with a list of local prosecution counsel contacts, and all such other documents, correspondence, and information as are reasonably requested by Purchaser to register, prosecute to issuance, own, enforce, or otherwise use the Transferred Patents, including any maintenance fees due and deadlines for actions to be taken concerning prosecution and maintenance of all Transferred Patents in the 180 day period following the date of this Agreement; and (ii) all documents, certificates, office actions, responses, correspondence, Contracts, and other filings and materials related to any Patents owned by any person, other than the Seller or any of the Seller Affiliates, that are in the possession of Seller or any of the Seller Affiliates.
- (b) Seller shall, and shall cause its Affiliates to, take such further actions and execute such further documents as may be reasonably necessary or reasonably requested by Purchaser in order to effectuate the intent of the Patent Assignment and the Patent License and to provide Purchaser in all material respects with the intended benefits of the Patent Assignment and the Patent License at Closing, including the execution and delivery of any affidavits, declarations, oaths, assignments, powers of attorney or other documents, as may be reasonable to effect, evidence or perfect the assignment of the Transferred Patents and the assignment and transfer of the Patent License to Purchaser.
- (c) Effective as of the Closing, Seller, on behalf of itself and each of the Seller Affiliates, hereby grants to Purchaser and its Affiliates a perpetual, fully paid-up, worldwide license to use and exercise all rights in and under any Technology of Seller or any of the Seller Affiliates as of the Closing that is used or of use in connection with the current and future operation of the Business, including any patents issued after the Closing arising from inventions existing as of the Closing.

## **12. MISCELLANEOUS**

### **12.1 Assignment**

Neither this Agreement nor any of the rights and obligations of the parties hereunder may be assigned by any of the parties hereto without the prior written consent of the other party hereto, except that (a) Purchaser may assign this Agreement and its right to purchase the Transferred Assets and delegate its obligations to assume the Assumed Liabilities hereunder in whole or in part to any of its Affiliates, without the prior written consent of Seller, (b) Purchaser may assign its rights and obligations under this Agreement in whole or in part through a collateral assignment to any lender providing financing in connection with the Acquisition without the prior written consent of Seller. Subject to the first sentence of this Section 12.1, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and no other person will have any right, obligation or benefit hereunder. Any attempted assignment or transfer in violation of this Section 12.1 will be void.

### **12.2 No Third Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied will give or be construed to give to any person, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

### 12.3 Expenses

Whether or not the transactions contemplated by this Agreement and the Ancillary Agreements are consummated, except as otherwise expressly provided herein or therein, each of the parties hereto shall be responsible for the payment of its own respective costs and expenses incurred in connection with the negotiations leading up to and the performance of its respective obligations pursuant to this Agreement and the Ancillary Agreements, including the fees of any attorneys, accountants, brokers or advisors employed or retained by or on behalf of such party.

### 12.4 Notices

All notices, requests, permissions, waivers and other communications hereunder must be in writing and will be deemed to have been duly given (a) when received, if sent by registered or certified mail, postage prepaid, (b) when delivered, if delivered personally to the intended recipient, and (c) when delivered, if sent via overnight delivery via a national courier service and, in each case, addressed to a party at the following address for such party:

(a) if to Seller,

Xtera Communications, Inc.  
500 W. Bethany Drive, Suite 100  
Allen, Texas 75013  
Attention: [General Counsel]

with a copy to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Thomas R. Califano

(b) if to Purchaser,

H.I.G. Europe – Neptune, Ltd  
c/o H.I.G. Europe Capital Partners II, L.P.

1450 Brickell Avenue, 31st Floor  
Miami, Florida 33131  
Attention: Richard Siegel

with a copy to:

Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: Daniel Guyder

or to such other addresses as furnished in writing by any such party to the other party to this Agreement in accordance with the provisions of this Section 12.4.

## **12.5 Headings; Interpretation**

The descriptive headings of the several Articles and Sections of this Agreement and the Disclosure Schedule to this Agreement and the Table of Contents to this Agreement are inserted for convenience only, do not constitute a part of this Agreement and do not affect in any way the meaning or interpretation of this Agreement. All references herein to “Articles”, “Sections”, “Exhibits” or “Schedules” are references to Articles or Sections hereof or Exhibits or Schedules hereto unless otherwise indicated. The words “hereof”, “hereto”, “hereby”, “herein” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “will” will be construed to have the same meaning as the word “shall”. Unless the context indicates otherwise, the word “or” is not exclusive. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as the feminine and neuter genders of such terms. Any agreement, instrument or applicable Law defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or applicable Law as from time to time amended, modified or supplemented. References to a person are also to its permitted successors and assigns.

## **12.6 Counterparts**

This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each of the parties hereto and delivered, in person or by facsimile or by electronic image scan, receipt acknowledged in each case, to the other party to this Agreement.

## **12.7 Integrated Contract, Exhibits and Schedules**

This Agreement, including the Disclosure Schedule (and the Introduction thereto) and Exhibits hereto, any written amendments to the foregoing satisfying the requirements of Section 12.13 and the Ancillary Agreements (including the schedules, exhibits and annexes thereto) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede any previous agreements and understandings between the parties with respect to such matters. All Exhibits and Schedules annexed hereto or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein are defined as set forth in this Agreement. There are no restrictions, promises, representations, warranties, agreements or undertakings of any party to this Agreement with respect to the transactions contemplated by this Agreement or the Ancillary Agreements other than those set forth herein or therein or in any other document required to be executed and delivered hereunder or thereunder. In evaluating and entering into this Agreement and the Ancillary Agreements, neither party has relied upon nor is it relying upon any representations, warranties or other statements, whether oral or written, except those representations and warranties set forth in this Agreement or the Ancillary Agreements. In the event of any conflict between the provisions of this Agreement (including the Disclosure Schedule (and the Introduction thereto) and Exhibits hereto), on the one hand, and the provisions of the Ancillary Agreements (including the schedules and exhibits thereto), on the other hand, the provisions of this Agreement control.

## 12.8 Severability; Enforcement

The invalidity of any portion of this Agreement will not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by Law, and each party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

## 12.9 Governing Law

The laws of the State of New York, without reference to its conflicts of law principles (other than Section 5-1401 of the General Obligations Law of the State of New York), govern all matters arising out of this Agreement and any disputes arising under or related hereto (whether for breach of contract, tortious conduct or otherwise), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

## 12.10 Jurisdiction

Without limiting any party's right to appeal an order of the Bankruptcy Court, each party irrevocably agrees that any Proceeding against it arising out of or in connection with this Agreement or the transactions contemplated by this Agreement or disputes relating hereto (whether for breach of contract, tortious conduct or otherwise) must be brought exclusively in the Bankruptcy Court and hereby irrevocably accepts and submits to the exclusive jurisdiction and venue of the aforesaid court with respect to any such Proceeding; *provided, however*, that if the Bankruptcy Case shall have closed and cannot be reopened, each party irrevocably agrees that any Proceeding against it arising out of or in connection with this Agreement or the transactions contemplated by this Agreement or disputes relating hereto (whether for breach of contract, tortious conduct or otherwise) must be brought exclusively in the United States District Court for the Southern District of New York, or, if such court does not have subject matter jurisdiction, the state courts of New York located in New York County and hereby irrevocably accepts and submits to the exclusive jurisdiction and venue of the aforesaid courts *in personam*, with respect to any such Proceeding.

## 12.11 Waiver of Jury Trial

Each party hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement or disputes relating hereto. Each party (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 12.11.

## 12.12 Specific Performance

Each party hereby agrees that irreparable damage would occur and it would not have an adequate remedy at law if any provision of this Agreement is not performed in accordance with its specific terms or otherwise breached. Accordingly, each party hereby agrees that the other party will be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the provisions of this Agreement, including the obligation to consummate the Acquisition, in the United

States District Court for the Southern District of New York or any state court of New York located in New York County, this being in addition to any other remedy to which they are entitled at law or in equity, whether pursuant to this Agreement or otherwise. In furtherance of the foregoing, the parties hereby waive, to the fullest extent permitted by applicable Law, (a) any and all defenses to any action for specific performance hereunder, including any defense based on the claim that a remedy at law would be adequate, and (b) any requirement to post a bond or other security as a prerequisite to seeking or obtaining equitable relief.

### **12.13 Amendments**

This Agreement may be amended, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by an instrument in writing signed by an officer of each of the parties hereto or, in the case of a waiver, by or on behalf of the party waiving compliance.

**IN WITNESS WHEREOF**, Seller and Purchaser have duly executed this Agreement as of the date first written above.

**As Seller,**

**XTERA COMMUNICATIONS, INC.**

By:

---

Name:

Title:

**As Purchaser,**

**H.I.G. EUROPE – NEPTUNE, LTD**

By:

---

Name:

Title:

**EXHIBIT 1**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**[to come]**

**EXHIBIT 2**  
**PATENT ASSIGNMENT**

**[to come]**



**EXHIBIT 3**  
**SALE ORDER**  
**[to come]**

**EXHIBIT 4**

**BID PROCEDURES ORDER**

[to come]

**DISCLOSURE SCHEDULE TO  
ASSET PURCHASE AGREEMENT**

**NOVEMBER 15, 2016**

**Between**

**Xtera Communications, Inc.**

**and**

**H.I.G. Europe – Neptune, Ltd**

**ALLEN & OVERY**

**Allen & Overy LLP**  
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## INTRODUCTION

This Disclosure Schedule is being delivered in connection with the Asset Purchase Agreement dated as of November 15, 2016 (the **Agreement**), among Xtera Communications, Inc., a Delaware corporation (**Seller**), and H.I.G. Europe – Neptune, Ltd (**Purchaser**). Terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement.

The descriptive headings of the several Articles and Sections of this Disclosure Schedule and the Table of Contents to this Disclosure Schedule are inserted for convenience only, do not constitute a part of this Disclosure Schedule and do not affect in any way the meaning or interpretation of this Disclosure Schedule or the Agreement.

The information contained herein is in all events subject to the Confidentiality Agreement and Section 12.7 of the Agreement.

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**Section 1 – Customers**

- Cinia
  - Cinia Cloud OY
- C&W
  - C&W Bermuda Limited
  - C&W (BVI) Limited
  - C&W (EWC) Limited
  - C&W Communications, Inc.
  - C&W (Anguilla) Limited
  - C&W Antigua & Barbuda Limited
  - C&W (Barbados) Limited
  - C&W (BVI) Limited
  - C&W Dominica Limited
  - C&W Grenada Limited
  - C&W St. Kitts & Nevis Limited
  - C&W (St. Lucia) Limited
  - C&W St. Vincent and the Grenadines Limited
  - C&W UK
  - C&W (Cayman Islands) Limited
  - C&W Jamaica Limited
- Defense Information Systems Agency (DISA)
- G2A
- GlobeNet
  - Brasil Telecom of America Inc./GlobeNet
  - Brasil Telecom Subsea Cable Systems (Bermuda) Ltd.
  - Brasil Telecom Cabos Submarinos Ltda.
  - Brasil Telecom de Venezuela, S.A.
  - GlobeNet Cabos Submarinos S.A.
  - GlobeNet Cabos Submarinos America, Inc.
  - GlobeNet Cabos Submarinos Bermuda Ltd.
    - GlobeNet Cabos Bermuda Ltd.
  - GlobeNet Cabos Submarinos VZLA, S.A.
  - GlobeNet Cabos Submarinos Colombia S.A.S.
- SRG
- MainOne
- AT&T
  - AT&T Corp.
  - AT&T Global Communications Services Inc.
  - AT&T Japan K.K.
  - AT&T Communications Services (Japan) Ltd.
  - AT&T Global Network Services (UK) B.V.
- Codetel
- Exxon
  - Esso Australia Pty. Ltd.
- Farose Telecom
  - Faroese Telecom P/F
- Global Cloud Exchange
- Level3
  - Meriton Networks

- Portuguese Telecom
  - PT Comunicações, S.A.
    - Serviços de Comunicações e Multimédia, S.A.
- Tames
- Telstra
- Vodafone
  - Vodafone Limited
- Antelecom N.V.
- Tata Communications (Bermuda) Limited
- Telkom SA Limited
- MCI International, Inc.
- Servicio di Telecomunicacion di Aruba N.V.
- Telepuerto San Isidro S.A
- KCS
- Flag Telecom Group Limited
- Pacnet Cable
  - Pacnet Cable Ltd.
  - Pacnet Cable (HK) Limited
  - Pacnet Cable (Japan) Corp.
  - Pacnet Cable (Korea) Ltd.
  - Pacnet Cable (S) Pte. Ltd.
  - Pacnet Cable (Taiwan) Ltd.
- C2C
  - C2C Pte. Ltd.
  - C2C (Hong Kong) Limited
  - C2C Japan K.K.
  - C2C Cable Korea Ltd.
  - C2C Singapore Pte. Ltd.
  - C2C Infocomm Cable (Taiwan) Limited
- Telecommunications Services of Trinidad and Tobago Limited

### Section 2.1(a)(i) – Transferred Contracts

All Customer Contracts, including without limitation each of the following:

#### Ongoing Live Project Contracts

1. Cinia
  - General Framework Agreement between Cinia Cloud OY and Xtera Communications, Inc. dated October 28, 2015.
2. C&W
  - Contract between C&W Bermuda Limited and C&W (BVI) Limited and Xtera Communications, Inc. dated January 12, 2009.
  - Contract Variation No. 1 dated July 26, 2010 to Contract between C&W (EWC) Limited and Xtera Communications Limited dated June 30, 2010.
  - Contract between C&W (EWC) Limited and Xtera Communications, Limited dated June 30, 2010.
  - Agreement between C&W Bermuda Ltd. and Azea Networks Limited dated May 22, 2007.
  - Supply Contract between C&W Bermuda Ltd. and Azea Networks Ltd. dated May 22, 2007.
  - Agreement between C&W Bermuda Ltd. and Azea Networks Ltd. dated May 22, 2007.
  - Contract Variation No. 1 dated September 19, 2007 to the Contract for the Gemini Bermuda Cable System between C&W Bermuda Ltd. and Azea Networks Ltd on May 22, 2007.
  - Contract Variation No. 2 dated October 30, 2007 to the Contract for the Gemini Bermuda Cable System between C&W Bermuda Ltd. and Azea Networks Ltd on May 22, 2007.
  - Purchase Order dated June 21, 2016 from Xtera Communications, Inc. to C&W, Inc. for EWC 100G Upgrade.
  - Purchase Order dated June 21, 2016 from Xtera Communications, Inc. to C&W, Inc. for ECFS 200G Upgrade.
  - Contract Variation #1 to the ECFS DWDM Upgrade Supply Contract between C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
  - Contract Variation #2 to the ECFS DWDM Upgrade Supply Contract between Antelecom NV, C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
  - Contract Variation #3 to the ECFS DWDM Upgrade Supply Contract between Antelecom NV, C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
  - Network Maintenance and Support Service Contract for C&W UK dated June 26, 2007.
  - Support Service Contract for C&W UK dated December 1, 2009.
  - Supply Agreement between C&W (Cayman Islands) Limited, C&W Jamaica Limited, and Xtera Communications, Inc. dated May 16, 2012.
  - Supply Contract among C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera relating to the Supply and Installation of the ECFS DWDM Upgrade
3. G2A



- G2A Submarine Cable System General Terms and Conditions of Contract – Part 1 between Oman Telecommunications Company S.A.O.G., Telesom Company, Golis telecommunications Company, and Xtera Communications, Inc. dated October 2015.
- G2A Cable System Technical Requirements – Part 3 dated October 2015
- G2A Cable System Equipment Price breakdown – Contract dated October 2015
- G2A Submarine Cable System Plan of Work – Part 4 dated October 2015
- G2A Submarine Cable System Billing Milestone and Payment Schedule – Part 5 dated October 2015

#### 4. GlobeNet

- Master Professional Services Agreement between Xtera Communications, Inc. and Brasil Telecom of America, Inc./GlobeNet dated June 30, 2010.
- Contract Variation 1 between Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., Brasil Telecom de Venezuela, S.A. and Xtera Communications, Inc. dated January 26, 2009.
- Upgrade Contract between Brasil Telecom of America, Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., Brasil Telecom de Venezuela, S.A. and Xtera Communications, Inc. dated November 26, 2008.
- Master Professional Services Agreement between Xtera Communications, Inc. and Brasil Telecom of America, Inc./GloboNet dated June 30, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc. and Brasil Telecom Subsea Cable Systems (Bermuda), Ltd. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom Subsea Cable Systems (Bermuda), Ltd., and Xtera Communications, Inc. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom Cabos Submarinos Ltda, and Xtera Communications, Inc. dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom Cabos Submarinos Ltda. Dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom of America, Inc. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom of America, Inc., and Xtera Communications, Inc. dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom de Venezuela, S.A. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated September 3, 2010.
- Contract Variation No. 5 dated June 2012 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
- Contract Variation No. 6 dated October 1, 2012 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
- Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil

- Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
- Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom Cabos Submarinos Ltda., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
  - Master Professional Services Agreement between Xtera Communications, Inc., and Brasil Telecom of America, Inc./GlobeNet dated September 4, 2013.
  - Amendment No. 1 to the Supply Agreement dated March 31, 2016 made as of March 31, 2016 by Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., and GlobeNet Cabos Submarinos America, Inc.
  - Contract Variation No. 1 which modifies the March 31, 2016 Upgrade Order between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc. and the March 31, 2016 Supply Agreement and is among Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., and GlobeNet Cabos Submarinos America, Inc.
  - Contract Variation No. 2 among Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., Globenet Cabos Submarinos Bermuda Ltd., and GlobeNet Cabos Submarinos America, Inc. modifying all four March 31, 2016 Upgrade Orders and the march 31, 2016 Supply Agreement between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos America, Inc. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos Bermuda Ltd. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos Bermuda Ltd. on behalf of Globenet Cabos Submarinos Vzla, S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Supply Agreement between GlobeNet Cabos Submarinos America, Inc., GlobeNet Cabos Submarinos S.A., and Xtera Communications Inc. dated March 31, 2016.
  - Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. dated December 3, 2014.
  - Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Reseller Agreement between Xtera Communications Inc. and GlobeNet Cabos Submarinos America Inc. dated September 2014.
  - Amended and Restated Amendment 9 between GlobeNet Cabos Submarinos Bermuda Ltd. and Xtera Communications, Inc. dated December 2, 2014 to the Upgrade Contract dated June 30, 2011.
  - Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. dated December 3, 2014.

- Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Bermuda Ltd. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos S.A. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Amendment 10 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Bermuda Ltd. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos S.A., Inc. and Xtera Communications, Inc. dated December 3, 2014.
  - Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos VZLA, S.A. and Xtera Communications, Inc. dated December 3, 2014.
  - Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos VZLA, S.A. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Contract Amendment No. 4 dated June 12, 2012 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom of America, Inc. dated June 30, 2011.
  - Contract Amendment No. 4 dated June 12, 2012 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom de Venezuela, S.A. dated June 30, 2011.
5. SRG<sup>1</sup>
- Agreement dated as of 1 April 2016 between Xtera Communications Inc. and EGS (Asia) Ltd. for Cable Route Study for SRG-1 Cable System
6. MainOne
- Letter of Bernard Logan, Chief Commercial Officer, Main One Cable dated as of 27 July 2015 Re: Xtera Upgrade of Main One Instruction to Proceed

**All of the existing service Contracts as set forth below (listed by operator, then by network):**

- 1) AT&T
- a) Americas I – Columbus II
- i) Contract Variation No. 12 dated January 1, 2012 between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. to the Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract
  - ii) Contract Variation No. 14 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc.
  - iii) Contract Variation No. 15 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated August 25, 2015
  - iv) Contract Variation No. 16 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated December 18, 2015.

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<sup>1</sup> On October 10, 2016, SRG sent the Notice of Default and Request to Cure Contract Silk Route Gateway – 1 SRG-1 Submarine Cable System notifying Seller of its right to terminate the Agreement dated as of 1 April 2016 between Xtera Communicatinos Inc. and EGS (Asia) Ltd. for Cable Route Study for SRG-1 Cable System if Seller did not cure alleged defaults under the Agreement within 30 days.

- v) Contract Variation No. 18 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 30, 2016.
  - vi) Contract Variation No. 1 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
  - vii) Contract Variation No. 10 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated April 29, 2010.
  - viii) Contract Variation No. 11 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated April 29, 2010.
  - ix) Contract Variation No. 13 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 29, 2012.
  - x) Contract Variation No. 17 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated October 1, 2015.
  - xi) Contract Variation No. 3 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
  - xii) Contract Variation No. 5 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
  - xiii) Contract Variation No. 7 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
  - xiv) Contract Variation No. 9 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated January 25, 2010.
  - xv) Certificate of Provisional Acceptance of Americas-1 North/Columbus-2 Segment-B Upgrade No. 1 dated December 29, 2009.
  - xvi) Americas-1 North/Columbus-2 Sement-B (DWA) Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 12, 2009.
- b) Columbus III
- i) Columbus III Submarine Cable System Upgrade Contract between AT&T Corp., PT Comunicações, S.A., MCI International, Inc., Tata Communications (Bermuda) Limited, Telkom SA Limited, and Xtera Communications, Inc. dated March 2, 2009.

- ii) Contract Variation No. 1 to the Columbus III Submarine Cable System Upgrade Supply Contract between AT&T Corp., PT Comunicações, S.A., MCI International, Inc., Tata Communications (Bermuda) Limited, Telkom SA Limited, and Xtera Communications, Inc. dated December 5, 2014.
- c) GOKI
  - i) Certificate of Provisional Acceptance for GOKI between AT&T Corp., AT&T Global Communications Services Inc., AT&T Japan K.K., Xtera Communications, Inc., and Kokusai Cable Ship Co., Ltd. dated December 31, 2013.
  - ii) GOKI Contract Variation No. CV-3 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated June 1, 2012.
  - iii) GOKI Contract Variation No. CV-4 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated September 19, 2012.
  - iv) GOKI Contract Variation No. CV-5 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated January 30, 2013.
  - v) GOKI Contract Variation No. CV-6 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated February 5, 2013.
  - vi) GOKI Contract Variation No. CV-8 between AT&T Corp., AT&T Japan K.K., AT&T Global Communications Services Inc., and Xtera and Kokusai Cable Ship Co., Ltd. dated April 1, 2011.
  - vii) GOKI Contract Variation No. CV-9 between AT&T Corp., AT&T Japan K.K., AT&T Global Communications Services Inc., and Xtera and Kokusai Cable Ship Co., Ltd. dated May 29, 2013.
  - viii) GOKI Supply Contract between AT&T Corp., AT&T Communications Services (Japan) Ltd. and Xtera and Kokusai Cable Ship Co., Ltd. dated April 4, 2011.
  - ix) GOKI Supply & Service Agreement between Xtera Communications, Inc. and KCS dated August 25, 2011.
- d) Project Aqua (TAT-12)
  - i) TAT-12 Contract between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc.
  - ii) TAT-12 Contract Variation No. CV-1 between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated September 30, 2014.
  - iii) TAT-12 Contract Variation No. CV-2 between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated October 16, 2014.
  - iv) TAT-12 Upgrade Certificate of Provisional Acceptance between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated June 30, 2014.
- 2) C&W
  - a) ARCOS XLS 10G
  - b) ARCOS Optima 100G
  - c) Bahamas-2
  - d) CBUS
  - e) CJFS
  - f) DR
  - g) East-West
  - h) ECFS
    - i) Supply Contract for the ECFS DWDM Upgrade among C&W (Anguilla) Limited, C&W Antigua & Barbuda Limited, C&W (Barbados) Limited, C&W (BVI) Limited, C&W Dominica Limited, C&W Grenada Limited, C&W St. Kitts & Nevis Limited, C&W (St. Lucia) Limited, C&W St. Vincent and the Grenadines Limited, and Telecommunications Services of Trinidad and Tobago Limited and Xtera Communications, Inc. dated September 2012.
  - i) Gemini-Bermuda

- j) Panama Backhaul
- 3) Codetel
  - a) Antillas-1
- 4) Exxon
  - a) PNG LNG
    - i) Standard Procurement Contract for Goods without Incidental Services between Xtera Communications, Inc. and Esso Australia Pty Ltd dated October 27, 2012.
- 5) Farose Telecom
  - a) SHEFA
    - i) SHEFA-2 Contract Schedule between Xtera Communications, Inc. and Faroese Telecom P/F dated January 15, 2007.
    - ii) SHEFA-2 Conditions of Contract.
- 6) Global Cloud Exchange
  - a) FA-1
    - i) Supply Agreement for the Upgrade of the FA-1 Backhaul Network between Flag Telecom Group Limited and Xtera Communications, Inc. dated May 24, 2004.
  - b) FEA Egypt
  - c) FEA Thailand
- 7) GlobeNet
  - a) Mango
- 8) Level3
  - a) AC-1
    - i) Meriton Networks End User License Agreement.
- 9) Portuguese Telecom
  - a) CAM Ring
    - i) CAM Ring Upgrade Contract between PT Comunicações, S.A. and Azea Networks Ltd. dated December 27, 2007.
    - ii) Contract Variation No. 5 to the CAM Ring Upgrade Contract between Serviços de Comunicações e Multimédia, S.A. and Xtera Communications Ltd. dated September 30, 2015.
    - iii) Contract Variation No. 1 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated February 27, 2008.
    - iv) Contract Variation No. 2 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated February 15, 2011.
    - v) Contract Variation No. 3 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated August 2, 2013.
    - vi) Contract Variation No. 4 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated September 20, 2013.
- 10) Tamares
  - a) Cyprus-Israel
- 11) Telstra
  - a) C2C
    - i) Agreement for the 2010 Upgrade of C2C Cable Network between Xtera Communications Ltd. and Pacnet Cable Ltd., Pacnet Cable (HK) Limited, Pacnet Cable (Japan) Corp., Pacnet Cable (Korea) Ltd., Pacnet Cable (S) Pte. Ltd., Pacnet Cable (Taiwan) Ltd. dated March 26, 2010.
    - ii) Agreement for the Upgrade of C2C Cable Network between Azea Networks Ltd. and C2C Pte. Ltd., C2C (Hong Kong) Limited, C2C Japan K.K., C2C Cable Korea Ltd., C2C Singapore Pte. Ltd., C2C Infocomm Cable (Taiwan) Limited dated November 22, 2007.
- 12) Vodafone
  - a) BBC
  - b) Hugo

- i) Hugo Cable System Segment 1 Upgrade Contract between Vodafone Limited and Xtera Communications, Inc. dated December 12, 2014
- ii) Xteracare Support Agreement between Xtera Communications, Inc. and Vodafone Limited dated December 17, 2014.

### Forthcoming Contract

For the avoidance of all doubt, the forthcoming contract with DISA, referred to as DISA-2, is a Transferred Contract.

### IP Licenses

Patent License Agreements:

1. License Agreement between Xtera Communications, Inc. and the Regents of the University of Michigan dated October 1, 2002.
2. First Amendment to License Agreement amends the License Agreement by Xtera Communications, Inc. and the Regents of the University of Michigan, dated as of October 1, 2002, effective as of October 2, 2015.
3. Repair or Replacement Limited License Agreement between Xtera Communications, Inc., STI Enterprises PLC, and Oman Telecommunications Company S.A.O.G. dated October 6, 2016.

### Material Equipment Leases

All leases relating to SHI/Cisco Servers (computer-related hardware and software), Winmark (high-tech equipment) and NetApp (data storage and management equipment), including, without limitation, the lease or leases relating to each of the following (*provided, however*, to the extent of any conflicting items between the items set forth below and Section 2.1(b)(i), the items set forth below will control):

#### SHI/CISCO Equipment

Line	Description	Part Number	QTY	Unit Price	Total Price
1	Cisco Catalyst 4510R+E - Switch - rack-mountable	WS-C4510R+E	1	\$2,593.15	\$2,593.15
2	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time:	CON-SNT-C4510R+E	1	\$4,609.76	\$4,609.76
3	Cisco Supervisor Engine 8-E - Control processor - plug-in module	WS-X45-SUP8-E	1	\$5,187.59	\$5,187.59
4	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
5	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
6	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
7	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
8	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
9	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82

Line	Description	Part Number	QTY	Unit Price	Total Price
10	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
11	Cisco - Power supply - hot-plug ( plug-in module ) - AC 200-240 V - 2800 Watt	PWR-C45-2800ACV	1	\$517.59	\$517.59
12	Cisco - Power supply ( plug-in module ) - AC 200/240 V - 2800 Watt	PWR-C45-2800ACV/2	1	\$517.59	\$517.59
13	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	2	\$258.15	\$516.30
14	Cisco Supervisor Engine 8-E Redundant - Control processor - plug-in module	WS-X45-SUP8-E/2	1	\$5,187.59	\$5,187.59
15	Cisco Catalyst 4510R+E - Switch - rack-mountable	WS-C4510R+E	1	\$2,593.15	\$2,593.15
16	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time:NBD - for P/N: WS-C4510R+E	CON-SNT-C4510R+E	1	\$4,609.76	\$4,609.76
17	Cisco Supervisor Engine 8-E - Control processor - plug-in module	WS-X45-SUP8-E	1	\$5,187.59	\$5,187.59
18	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
19	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
20	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
21	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
22	Cisco - Power supply - hot-plug ( plug-in module ) - AC 200-240 V - 2800 Watt	PWR-C45-2800ACV	1	\$517.59	\$517.59
23	Cisco - Power supply ( plug-in module ) - AC 200/240 V - 2800 Watt	PWR-C45-2800ACV/2	1	\$517.59	\$517.59
24	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	2	\$258.15	\$516.30
25	Cisco Supervisor Engine 8-E Redundant - Control processor - plug-in module	WS-X45-SUP8-E/2	1	\$5,187.59	\$5,187.59
26	Cisco Catalyst 4507R - Switch - rack-mountable	WS-C4507R+E	1	\$1,814.82	\$1,814.82
27	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time: NBD	CON-SNT-C4507R+E	1	\$2,423.41	\$2,423.41
28	Cisco Supervisor Engine 8-E - Control processor - plug-in module	WS-X45-SUP8-E	1	\$5,187.59	\$5,187.59
29	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	2	\$258.15	\$516.30
30	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
31	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70
32	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
33	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70
34	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
35	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70



Line	Description	Part Number	QTY	Unit Price	Total Price
36	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
37	Cisco - Power supply - hot-plug ( plug-in module ) - AC 200-240 V - 2800 Watt	PWR-C45-2800ACV	1	\$517.59	\$517.59
38	Cisco - Power supply ( plug-in module ) - AC 200/240 V - 2800 Watt	PWR-C45-2800ACV/2	1	\$517.59	\$517.59
39	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
40	Cisco Supervisor Engine 8-E Redundant - Control processor - plug-in module	WS-X45-SUP8-E/2	1	\$5,187.59	\$5,187.59
41	Cisco Catalyst 4507R - Switch - rack-mountable	WS-C4507R+E	1	\$1,814.82	\$1,814.82
42	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time:	CON-SNT-C4507R+E	1	\$2,423.41	\$2,423.41
43	Cisco Supervisor Engine 8-E - Control processor - plug-in module	WS-X45-SUP8-E	1	\$5,187.59	\$5,187.59
44	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	2	\$258.15	\$516.30
45	Cisco Catalyst 4500E Series Line Card - Switch - 48 x 10/100/1000 - plug-in module - or Catalyst 4507R-E, 4507R-E Data Bundle, 4507R-E PoE Bundle, 4510R-E	WS-X4748-RJ45-E	1	\$1,814.82	\$1,814.82
46	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70
47	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
48	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70
49	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
50	Cisco Line Card E-Series - Switch - 12 x 10 Gigabit SFP+ - plug-in module	WS-X4712-SFP+E	1	\$7,003.70	\$7,003.70
51	CTO 10GBASE-SR SFP MOD	SFP-10G-SR	12	\$258.15	\$3,097.80
52	Cisco - Power supply - hot-plug ( plug-in module ) - AC 200-240 V - 2800 Watt	PWR-C45-2800ACV	1	\$517.59	\$517.59
53	Cisco - Power supply ( plug-in module ) - AC 200/240 V - 2800 Watt	PWR-C45-2800ACV/2	1	\$517.59	\$517.59
54	Cisco Supervisor Engine 8-E Redundant - Control processor - plug-in module	WS-X45-SUP8-E/2	1	\$5,187.59	\$5,187.59
55	Cisco Catalyst 6807-XL - Switch - rack-mountable	C6807-XL	1	\$3,891.67	\$3,891.67
56	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time: NBD - for P/N: C6807-XL, C6807-XL=	CON-SNT-C6807XLC	1	\$4,840.68	\$4,840.68
57	Cisco - Fan tray - for P/N: C6807-XL	C6807-XL-FAN	1	\$129.72	\$129.72
58	Cisco - USB cable - 4 pin USB Type A (M) - mini-USB Type B (M) - 1.8 m	CAB-CONSOLE-USB	1	\$7.78	\$7.78
59	Cisco Catalyst 6500 Series Supervisor Engine 2T - Control processor - 10 GigE -plug-in module - for Catalyst 6503-E, 6504-E, 6506-E, 6506-E IDSM-2, 6509-E, 6509-E10Gig, 6509-V-E, 6513-E	VS-S2T-10G	1	\$7,264.44	\$7,264.44
60	Cisco Catalyst 6800 Series 10 Gigabit Ethernet Fiber Module with DFC4 - Expansion module - 10	C6800-16P10G	1	\$6,486.11	\$6,486.11

Line	Description	Part Number	QTY	Unit Price	Total Price
	GigE - 10GBase-X - for Catalyst 6503, 6504, 6506, 6509, 6807, C6504				
61	Cisco - Power supply - redundant ( plug-in module ) - AC 100-240 V - 3000 Watt	C6800-XL-3KW-AC	2	\$778.33	\$1,556.66
62	CTO 10GBASE-SR SFP MOD	SFP-10G-SR-S2TISK9-	10	\$258.15	\$2,581.50
63	Cisco IOS IP Services - ( v. 15.2(1)SY ) - license	15201SY	1	\$2,594.44	\$2,594.44
	Cisco - SFP (mini-GBIC) transceiver module - 1000Base-LX, 1000Base-LH - LC/PC single mode - up to 10 km - 1310 nm - for Cisco 38XX, 39XX, 4451, 892; Catalyst 29XX, 3650; ME 3600;				
64	Supervisor Engine 8; UCS 62XX	GLC-LH-SMD	2	\$258.15	\$516.30
	Cisco - X2 transceiver module - 10GBase-T - RJ-45 - up to 100 m - for Catalyst 4500,4506-E, 4900M, 6506-E, 6506-E IDSM-2	X2-10GB-T	2	\$258.15	\$516.30
66	Cisco Catalyst 6807-XL - Switch - rack-mountable	C6807-XL	1	\$3,891.67	\$3,891.67
	Cisco SMARTnet - Extended service agreement - replacement - 8x5 - response time: NBD	CON-SNT-C6807XLC	1	\$4,840.68	\$4,840.68
68	Cisco - Fan tray - for P/N: C6807-XL	C6807-XL-FAN	1	\$129.72	\$129.72
69	Cisco - USB cable - 4 pin USB Type A (M) - mini-USB Type B (M) - 1.8 m	CAB-CONSOLE-USB	1	\$7.78	\$7.78
70	Cisco Catalyst 6500 Series Supervisor Engine 2T - Control processor - 10 GigE -plug-in module	VS-S2T-10G	1	\$7,264.44	\$7,264.44
	Cisco Catalyst 6800 Series 10 Gigabit Ethernet Fiber Module with DFC4 - Expansion module - 10 GigE - 10GBase-X	C6800-16P10G	1	\$6,486.11	\$6,486.11
	Cisco - Power supply - redundant ( plug-in module ) - AC 100-240 V - 3000 Watt	C6800-XL-3KW-AC	2	\$778.33	\$1,556.66
73	CTO 10GBASE-SR SFP MOD	SFP-10G-SR-S2TISK9-	10	\$258.15	\$2,581.50
74	Cisco IOS IP Services - ( v. 15.2(1)SY ) - license	15201SY	1	\$2,594.44	\$2,594.44
	Cisco - SFP (mini-GBIC) transceiver module - 1000Base-LX, 1000Base-LH - LC/PC single mode - up to 10 km - 1310 nm				
75	Supervisor Engine 8; UCS 62XX	GLC-LH-SMD	2	\$258.15	\$516.30
	Cisco - X2 transceiver module - 10GBase-T - RJ-45 - up to 100 m - for Catalyst 4500,4506-E, 4900M, 6506-E, 6506-E IDSM-2	X2-10GB-T	2	\$258.15	\$516.30
					<b>\$217,376.60</b>

**NETAPP Equipment**

UK

Line	Description	Product	Qty	Price	Total
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Line	Description	Product	Qty	Price	Total
1	FAS2552 High Availability System	FAS2552A-001-R6	2	\$2,593.01	\$5,186.02
2	SW-2,Premium BNDL,2552A,-C	SW-2-2552A-PREMBNDL-C	2	\$6,512.92	\$13,025.84
3	Documents,2552,-C	DOC-2552-C	1	\$0.00	\$0.00
4	Rackmount Kit,4-Post,Universal,-C,R6	X5526A-R6-C	1	\$0.00	\$0.00
5	Cbl,SAS Cntrl-Shelf/Shelf-Shelf/HA,0.5m,EN,-C	X6557-EN-R6-C	2	\$0.00	\$0.00
6	Cable,Ethernet,0.5m RJ45 CAT6,-C	X6560-R6-C	1	\$0.00	\$0.00
7	Power Cable North America,-C,R6	X800E-R6-C	2	\$0.00	\$0.00
8	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,1P,-C	OS-ONTAP-CAP2-1P-C	240	\$27.52	\$6,604.80
9	Cable,Direct Attach CU SFP+ 10G,2M	X6566B-2-R6	2	\$82.26	\$164.52
10	FAS2552,4x400GB,20x1.2TB,Mixed,-C	FAS2552-201-R6-C	1	\$22,477.88	\$22,477.88
11	OS Enable,Per-0.1TB,ONTAP,Ultra-Stor,1P,-C	OS-ONTAP-CAP3-1P-C	16	\$232.86	\$3,725.76
12	SupportEdge Standard Part Replace 4hr	CS-A2-4R	1	\$6,731.76	\$6,731.76
13	SW-2,Base,CL,Node	SW-2-CL-BASE	1	\$0.00	\$0.00
14	SW,NetApp OnCommand core	SW-NOC-CORE	1	\$0.00	\$0.00
15	fas 25xx cdot san onsite, Advanced Install	SST-RIS-F25XC-SANA-NAPS	1	\$7,650.75	\$7,650.75
					<b>\$65,567.33</b>

## US

Line	Description	Product	Qty	Price	Total
1	FAS2552 High Availability System	NetApp - Part#: FAS2552A-001-R6	2	\$2,548.11	\$5,096.22
2	SW-2,Premium BNDL,2552A,-C	NetApp - Part#: SW-2-2552A-PREMBNDL-C	2	\$6,393.12	\$12,786.24
3	Documents,2552,-C	NetApp - Part#: DOC-2552-C	1	\$0.00	\$0.00
4	Rackmount Kit,4-Post,Universal,-C,R6	NetApp - Part#: X5526A-R6-C	1	\$0.00	\$0.00
5	Power Cable North America,-C,R6	NetApp - Part#: X800E-R6-C	2	\$0.00	\$0.00
6	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,1P,-C	NetApp - Part#: OS-ONTAP-CAP2-1P-C	240	\$27.01	\$6,482.40
7	Cable,Direct Attach CU SFP+ 10G,2M	NetApp - Part#: X6566B-2-R6	2	\$81.14	\$162.28
8	FAS2552,4x400GB,20x1.2TB,Mixed,-C	NetApp - Part#: FAS2552-201-R6-C	1	\$22,088.20	\$22,088.20

Line	Description	Product	Qty	Price	Total
		FAS2552-201-R6-C NetApp - Part#: OS-ONTAP-			
9	OS Enable,Per-0.1TB,ONTAP,Ultra-Stor,1P,-C	CAP3-1P-C	16	\$228.58	\$3,657.28
		NetApp - Part#: CS-A2-4R			
10	SupportEdge Standard Part Replace 4hr	CS-A2-4R	1	\$6,603.28	\$6,603.28
		NetApp - Part#: TI-D-BASE			
11	Trade-in Credit,D,Platform Base	TI-D-BASE	1	-\$216.59	-\$216.59
		NetApp - Part#: TI-K-SW			
12	Trade-in Credit,K,Software Returns	TI-K-SW	1	-\$1,251.09	-\$1,251.09
		NetApp - Part#: DS2246-SL001-24M-1P-SK-R6			
13	DSK SHLF,4x400GB,20x1.2TB,Mixed,1P,SK	DS2246-SL001-24M-1P-SK-R6	1	\$22,088.74	\$22,088.74
		NetApp - Part#: X5526A-R6			
14	Rackmount Kit,4-Post,Universal,R6	X5526A-R6	1	\$44.09	\$44.09
		NetApp - Part#: X6558-R6			
15	Cable,SAS Cntlr-Shelf/Shelf-Shelf/HA,2m	X6558-R6	4	\$75.33	\$301.32
		NetApp - Part#: X6561-R6			
16	Cable,Ethernet,2m RJ45 CAT6	X6561-R6	2	\$4.52	\$9.04
		NetApp - Part#: X6562-R6			
17	Cable,Ethernet,5m RJ45 CAT6	X6562-R6	1	\$6.53	\$6.53
		NetApp - Part#: X800E-R6			
18	Power Cable North America,R6	X800E-R6	2	\$0.00	\$0.00
		NetApp - Part#: OS-ONTAP-			
19	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,1P,-P	CAP2-1P-P	240	\$27.01	\$6,482.40
		NetApp - Part#: OS-ONTAP-			
20	OS Enable,Per-0.1TB,ONTAP,Ultra-Stor,1P,-P	CAP3-1P-P	16	\$228.58	\$3,657.28
		NetApp - Part#: CS-A2-4R			
21	SupportEdge Standard Part Replace 4hr	CS-A2-4R	1	\$1,992.28	\$1,992.28
		NetApp - Part#: SW-2-CL-BASE			
22	SW-2,Base,CL,Node	SW-2-CL-BASE	1	\$0.00	\$0.00
		NetApp - Part#: SW-NOC-CORE			
23	SW,NetApp OnCommand core	SW-NOC-CORE	1	\$0.00	\$0.00
		NetApp - Part#: SST-RIS-F25XC-SANA-NAPS			
24	fas 25xx cdot san onsite, Advanced Install	SST-RIS-F25XC-SANA-NAPS	1	\$7,650.75	\$7,650.75
		NetApp - Part#: SST-DS-ADD-NAPS			
25	Disk Shelf Installation - Add On	SST-DS-ADD-NAPS	1	\$397.65	\$397.65
					<b>\$98,038.30</b>

**WINMARK Equipment**

Line	Description	Product	Qty	Price	Total
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Line	Description	Product	Qty	Price	Total
1	PowerEdge R630 Server	721212771	2	\$14,758.20	\$29,516.40
2	Dell Latitude E7450	BTX (210-ADBE)	5	\$1,526.42	\$7,632.10
3	OptiPlex 7020 MT	724334545	2	\$985.04	\$1,970.08
4	Dell 23 Monitor	P2314H	6	\$218.10	\$1,308.60
5	DELL Wireless K&M	1017545809249	5	\$38.30	\$191.50
6	Dell OptiPlex 3040	6R79D	4	\$527.00	\$2,108.00
7	Dell Monitor stand	330-0874	1	\$81.00	\$81.00
8	FRU, LTO-7 Half-Height Drive, SAS, T50e. SAS Cable, Mini-SAS (SFF8088) to Mini-SAS	90979524-F	2	\$5,777.78	\$11,555.56
9	(SFF8088), 6Gb FRU, Shared Library Services (SLS) Direct	8840	2	\$116.67	\$233.34
10	Connect License, T50e Spectra Logic LTO-6 MLM TeraPack - 10 x LTO	90979018-F	1	\$1,805.56	\$1,805.56
11	Ultrium 6 LTO-7 BaFe MLM TeraPack (Certified) - 10 LTO-7	90949396	4	\$558.17	\$2,232.68
12	BaFe tapes, Spectra Logic Half-Height Drive - Tape library	90949613	1	\$1,627.28	\$1,627.28
13	drive module	S50E-D-1-NB-C	10	\$60.44	\$604.40
14	Recon, LTO-5 HH Drive T50E	R90979488	1	\$1,000.00	\$1,000.00
15	Dell SonicWALL SonicPoint ACi		6	\$394.55	\$2,367.30
16	SonicWALL NSA 2600	01-SSC-4275	2	\$3,302.17	\$6,604.34
17	SonicWALL TZ400	01-SSC-0505	1	\$1,157.28	\$1,157.28
18	SonicWALL TZ400	01-SSC-0505	1	\$1,135.78	\$1,135.78
19	SonicWALL SRA 4600	01-SSC-7157	2	\$2,459.60	\$4,919.20
20	Sonicwall Maintenance & support	01-SSC-0016	4	\$1,591.60	\$6,366.40
21	Dell - Storage controller - 2 Channel - SAS 2	342-0910	3	\$171.72	\$515.16
22	Dell Latitude E7470		10	\$1,509.95	\$15,099.50
23	Dell Latitude E7470 - UK		2	\$1,381.62	\$2,763.24
24	Apc Smart-UPS	SRT3000RMXLT	2	\$2,221.21	\$4,442.42
					<b>\$107,237.12</b>

### Contractor Agreements

The following agreements relating to the contractors currently working on behalf of Seller or one of the Seller Affiliates for the Business:

Consulting Agreement by and between Xtera Communications, Inc. and Ricardo Franco

Consulting Agreement by and between Xtera Communications, Inc. and Yongun Han

Consulting Agreement by and between Xtera Communications, Inc. and Pierogiovanni Matrona

Consulting Agreement by and between Xtera Communications, Inc. and Muhammad Salah

The consulting agreements between Seller and/or Seller Affiliates and each of (i) Richard Dodd (Hunter Electronics) and (ii) Massimo Leo



**Section 2.1(a)(ii) – Transferred Leases**

All leases of Seller for real property in Harold Wood, Romford, Essex, UK (including, for the avoidance of doubt, 31 Recreation Avenue) and in Allen, Texas, USA including, but not limited to, the following:

Lease between Thomas Bates and Son Limited and Xtera Communications Limited dated December 20, 2012 in respect of First Floor Bates House, Church Road, Harold Wood, Romford, Essex.

Lease between Thomas Bates and Son Limited and Xtera Communications Limited dated December 20, 2012 in respect of Part of Ground Floor Bates House, Church Road, Harold Wood, Romford, Essex.

Lease between Thomas Bates and Son Limited and Azea Networks Limited dated October 8, 2003 in respect of First Floor Bates House, Church Road, Harold Wood, Romford, Essex.

Commercial Lease ACLP Bethany, L.P. and Xtera Communications, Inc. dated May 15, 2000.

First Amendment to Commercial Lease between ACLP Bethany, L.P. and Xtera Communications, Inc. dated January 1, 2001.

Second Amendment to Commercial Lease between GL Bethany Tech, L.P., successor to ACLP Bethany, L.P., and Xtera Communications, Inc. dated June 25, 2003.

Third Amendment to Commercial Lease between GL Dallas Holdings, L.P., successor to GL Bethany Tech, L.P., and Xtera Communications, Inc. dated October 26, 2007.

Fourth Amendment to Commercial Lease between GL Dallas Holdings, L.P. and Xtera Communications, Inc. dated October 16, 2014.

Deed of Variation and Counterpart Lease between Thomas Bates and Son Limited and Azea Networks Limited dated 2003 in respect of First Floor Bates House, Church Road, Harold Wood, Romford, Essex.

Counterpart Lease between Thomas Bates and Son Limited and Xtera Communications Limited dated 2015 in respect of Unit 10 Bates Industrial Estate, Church Road, Harold Wood, Romford, Essex.

Lease between Thomas Bates and Son Limited and Azea Networks Limited dated May 28, 2004 in respect of Unit 32D Bates Industrial Estate, Church Road, Harold Wood, Romford, Essex.

Further Memorandum of Rent Increase between Garry Wickes and Xtera Communications Limited dated April 16, 2014 in respect of 31 Recreation Avenue, Harold Wood, Essex.

**Section 2.1(a)(iii) – Inventory**

Except as otherwise provided in Section 2.1(b)(1) of the Disclosure Schedule, all non-obsolete Inventory of the Business, including for the avoidance of doubt all raw materials and components, finished goods, sub-assembly Inventory, consigned Inventory at Foxconn and MC Assembly and Inventory relating to Saudi Electric (whether or not such Inventory is carried in the Inventory reports of Seller).



**Section 2.1(a)(iv) – Transferred Equipment**

All fixed assets of Xtera Communications Limited, including all those fully depreciated assets currently carried at zero net book value

All test equipment currently held at Foxconn San Jose, STI, Nexans' manufacturing facility in Rognan and the laboratory in Allen, Texas

To the extent not already a Transferred Asset, the following Equipment and other fixed assets of the Seller (as set forth on the Fixed Asset Summary Report of Seller dated as of August 31, 2016):

Sys No	Description
675	TEN Developer O
731	AQ8203 Modular
732	OPTICAL Attenua
733	OPTICAL power M
736	FUSION Splicer V
737	HIGH Strength C
738	HIGH Strength P
739	EXTERNAL Cavity
740	WAVELENGTH Sele
741	RF Modulation
749	C/C++ Compiler A
751	FPGA ADVANTAGE
768	HIGH DENSITY TER LOGIC ANALYSIS
769	SY
770	2M 333MHZ STATE/
771	2M 135 STATE / 500
772	DIGITALIZING OSCI
785	INFINIUM DCA OSC
786	12.5 GHZ TRIGGER AQ6317B OPTICAL
790	S
	AQ6140 MULTI
809	WAV
	AQ6140 MULTI
810	WAV
813	AQ8203 MODULAR
814	AQ8201-21 OPTICAL
815	AQ8201-21 OPTICAL
816	AQ8201-31 OPRICA
817	AQ8201-422 DUAL 2
818	AQ8203 MODULAR
822	EXTERNAL CAVITY
824	EXTERNAL CAVITY
826	RF MODULATION

Sys No	Description
827	EXTERNAL CAVITY
	WAVELENGTH
828	SELE
	POLARIZATION
829	MAI
	ADVANCED NETW
831	T
835	CHROMATIC DISPE
	OPTICAL LOSS
836	ANA
	ANDO
838	CORPORATIO
1429	Error Performance An
1920	Splice Machine (Fitel
1921	JDS System Tuneabl
1766	Audio/Video DSP Set
1882	Sun SPARC ENT T20
1883	Sun SPARC ENT T20
1968	NetUSB-1149.1/E wit
2537	PowerEdge R620
2900	PowerEdge R620 (NM
1401	SUNFIRE 4800 - AS
1738	eDA Card
2336	ENE Software
	USB AGENT
144	ANALY
146	VPI TRANSMISSION
150	USB SOFTWARE ST
151	USB SOFTWARE ST
	THERMAL FLOW
154	SO
155	PRO/ENGINEER DE
	MATLAB
170	COMPUTA
175	EHUB BUNDLE/SER
459	MLWIN MATLAB

Sys No	Description
	NO
	MLUNIX MATLAB
460	NO
	MLALL MATLAB-
461	CO
	GLALL MATLAB-
462	C/C
	CPALL MATLAB-
463	C/C
	COALL MATLAB
464	CO
585	CADENCE CONCEP
586	CADENCE PCB DES
650	MATLAB CONCURR
884	21002.3D - DEVELO
892	MATLAB - CONCUR
1197	VT2100 ALLEGRO D
1474	ANSYS Multiphysics
	MATLAB
1482	INDIVIDUA
	MATLAB
1549	COMPILER
1560	PCB design expert w
1561	SIMULINK PART # S
1562	Perpetual License Up
1563	Perpetual Software L
1697	SYSTEM MANAGER
1922	FiberPro PS-155-A A
1923	FiberPro PS-155-A A
1924	FiberPro PS-155-A A
1796	ES Amp Module Test
1797	ES Amp Module Test
1800	ES Amp Module Test
1808	MAPL+2T1FA, tunab
1820	ES Amp Module Test

Sys No	Description
1880	PH: GEN 60-85-LAN-
1887	PH: GEN 60-85-LAN-
1913	ESS Chamber
1940	ASE-CL-20-B with FC
1950	Boundary Scan Tools
1978	Agilent HP 81626B
1979	Agilent-HP 81626B
1985	Polatis Switch for 40G
1994	Agilent 81640A Optio
2030	Agilent 81662A
2031	Agilent 81662A
2032	Agilent 81662A
2033	Agilent 81662A
2034	TS-10
2039	Broadband Test Solu
2043	Attenuators for 100G AGI 81640A
2052	TUNABL
2055	DMM Bench 6.5 Digit
2056	Agilent 81618A
2057	Agilent 81618A
2058	Agilent 81625A
2059	Agilent E3631A
2370	Brady TLS2200 Ther
2371	Brady TLS2200 Ther
2339	HP Agilent 81662A L
2340	HP Agilent 81662A IT
2341	HP 81662A - DFB So
2342	HP 81662A - DFB So
2344	Agilent 81662 Option
2345	Agilent 81662 Option
2346	Agilent 81663A Optio
2347	81662A_313
2348	81661A_309
2363	HP/Agilent 81662A D
2364	HP Agilent 81662A IT Agilent 81662A
2394	10mW
2395	Agilent 81663A High
2396	Agilent 81663A High
2365	TK-200-524OS
2366	TK-200-524OS
2367	TK-200-524OS

Sys No	Description
2372	81950A Tunable Las
2373	81950A Tunable Las
2374	81950A Tunable Las
2375	81950A Tunable Las
2388	OSA: FTB-7600E-NS
2389	OSA: FTB-7600E-NS
2386	Agilent 8166A Lightw
2443	Lasers for Optima an
2444	Lasers for Optima an
2445	Lasers for Optima an
2461	L-band Tunable mini-
2462	L-band Tunable mini-
2463	L-band Tunable mini-
2464	L-band Tunable mini-
2468	EXFO Packet Blazer
2475	PM Mux 100GHz-186
2476	PM Mux 100GHz-186
2539	160-3360-212 PIU 10
2540	160-3360-212 PIU 10
2541	160-3360-212 PIU 10
2542	160-3360-212 PIU 10
2543	160-3360-212 PIU 10
2544	160-3360-212 PIU 10
2545	160-3360-212 PIU 10
2548	160-3360-212
2958	EXFO Power Blazer F
2972	EXFO Power Blazer F
3014	SM OTDR 1310/1550
3252	FTB-2-PRO
3253	FTB-88100NGE
3257	FTB-7600E-NS1254-FTB-5240S-P-INB-EA
3258	EA
3259	FTB-8830NGE-GigE
3260	FTB-85970
3264	FTB-2-PRO
3265	FTB-2-PRO
3266	FTB-88100NGE
3267	FTB-88100NGE
3272	FTB-7600E-NS1254-FTB-5240S-P-INB-EA
3273	EA
3274	FTB-8830NGE-GigE

Sys No	Description
3275	FTB-85970
3276	FTB-85970
3341	AC400-001-EVB Eva
3342	AC400-101-070
3343	AC400-101-070
3393	PIU, OPTIMA LLM, 4
3394	PIU, OPTIMA LLM, 4
3395	PIU, OPTIMA LLM, 4
3396	PIU, OPTIMA LLM, 4
3397	PIU, OPTIMA LLM, 4
3398	PIU, OPTIMA LLM, 4
3468	PIU, OSC (ES DESIG
3469	PIU, OSC (ES DESIG
3470	PIU, OSC (ES DESIG
3471	AMPLIFIER SHELF C
3472	AMPLIFIER SHELF C
3473	AMPLIFIER SHELF C
3474	AMPLIFIER SHELF C
3475	AMPLIFIER SHELF C
3476	AMPLIFIER SHELF C
3477	AMPLIFIER SHELF C
3478	8RU SHELF CONTR
3479	8RU SHELF CONTR
3480	8RU SHELF CONTR
3481	8RU SHELF CONTR
3482	8RU SHELF CONTR
3483	8RU SHELF CONTR
3484	8RU SHELF CONTR
3485	NODE CONTROLLE
3486	NODE CONTROLLE
3490	PIU, CLM-S, EGM FO
3491	PIU, CLM-S, EGM FO
3492	PIU, CLM-S, EGM FO
3493	PIU, CLM-S, EGM FO
3499	RMM, PDU-T5 (170-5

Sys No	Description
3500	RMM, OCHM-A, SING
3560	RMM, APM (ES DES
3561	RMM, APM (ES DES
3562	RMM, APM (ES DES
3563	RMM, APM (ES DES
3564	RMM, APM (ES DES
3565	RMM, APM (ES DES
3566	RMM, APM (ES DES
3567	RMM, APM (ES DES
3573	PIU, OSC (ES DESIG
3574	PIU, OSC (ES DESIG
3575	PIU, OSC (ES DESIG
3576	PIU, OSC (ES DESIG
3577	PIU, OSC (ES DESIG
3578	PIU, OSC (ES DESIG
3579	PIU, OSC (ES DESIG
3580	PIU, OSC (ES DESIG
3581	PIU, OSC (ES DESIG
3582	PIU, OSC (ES DESIG
3583	PIU, OSC (ES DESIG
3584	PIU, OSC (ES DESIG
3585	PIU, OSC (ES DESIG
3586	PIU, 8RU ALARMS (1
3587	PIU, 8RU ALARMS (1
3588	PIU, 8RU ALARMS (1
3589	PIU, 8RU ALARMS (1
3598	C-BAND TUNABLE,
3599	C-BAND TUNABLE,
3600	C-BAND TUNABLE,
3601	C-BAND TUNABLE,
3602	C-BAND TUNABLE,
3603	C-BAND TUNABLE,
3604	C-BAND TUNABLE,
3655	RMM, OCHM, SINGL
3656	RMM, OCHM, SINGL
181	WAVEPRO 960
204	LOGIC ANALYZER &

Sys No	Description
213	OPTICAL SPECTRU
214	OPTICAL ATTENUA
215	FUSION SPLICER
216	WHITE LIGHT SOUR
226	OPTICAL ANALYZER
227	OCSILLOSCOPE MA MULTI
228	WAVELENGT
229	MAINFRAME FOR T
242	TRCVR GENERATO
243	OSCILLOSCOPE FIBER
246	POLARIZATIO POLARIZATION ANA
247	ANA
248	OPTICAL ATTENUA
249	OPTICAL ATTENUA
250	LASER SPECTRUM TRUEWAVE RS
251	FIBE
252	O/E CONVERTER MODULAR CONTRO
253	CONTR
254	UGRADE LASER TUNABLE LIGHT
255	SO
258	TUNABLE FILTER &
259	TUNABLE FILTER &
260	10GB/S CLOCK & DA
262	LIGHTWAVE MEASU
263	PM SPLICER/15MM
264	FUSION SPLICER
266	OPICAL SPECTRUM
270	GAIN FLATTENING
283	MODULAR POWER
287	ECL MODULES/OPT MODULAR
336	MAINFRA
337	DFB LASER -16
390	OSCILLOSCOPE
417	MULTI

Sys No	Description
	WAVELENGT
427	OSCILLOSCOPE-2 C
438	VPI COMPONENTM
476	8732B WITH AM FM
477	MW9076D1 4 WAVE
483	AQ8201-21 OPTICAL
484	AQ8201-21 OPTICAL
485	AQ8201-32M OPTIC
486	AQ8201-32M OPTIC
487	AQ8203 HALFSIZE F
488	AQ8203 HALFSIZE F
489	AQ8201-110 S-BAND
505	AQ8201-110 WDM D
506	AQ8201-110 WDM D
507	AQ8201-110 WDM D
508	AQ8201-110 WDM D
509	AQ8201-110 WDM D
510	AQ8201-110 WDM D
511	AQ8201-110 WDM D
512	AQ8201-110 WDM D
513	AQ8201-110 WDM D
514	AQ8201-110 WDM D
515	AQ8201-110 WDM D
516	AQ8201-110 WDM D
517	AQ8201-110 WDM D
518	AQ8201-110 WDM D
519	AQ8201-110 WDM D
520	AQ8201-110 WDM D
521	AQ8201-110 WDM D
522	AQ8201-110 WDM D
523	AQ8201-110 WDM D
524	AQ8201-110 WDM D
525	AQ8201-110 WDM D
526	312659 FOCUS ASS
529	AQ8201-110 WDM D
530	AQ8201-110 WDM D
531	AQ8201-110 WDM D
532	AQ8201-110 WDM D
533	AQ8201-110 WDM D
534	AQ8201-110 WDM D
535	AQ8201-110 WDM D
536	AQ8201-110 WDM D
537	AQ8201-110 WDM D

Sys No	Description
538	AQ8201-110 WDM D
539	AQ8201-110 WDM D
540	AQ8201-110 WDM D
541	AQ8201-110 WDM D
542	AQ8201-110 WDM D
543	AQ8201-110 WDM D
544	AQ8201-110 WDM D
545	AQ8201-110 WDM D
546	AQ8201-110 WDM D
547	AQ8201-110 WDM D
548	AQ8201-110 WDM D
549	AQ8201-110 WDM D
550	AQ8201-110 WDM D
551	AQ8201-110 WDM D
552	AQ8201-110 WDM D
553	AQ8201-110 WDM D
554	AQ8201-110 WDM D
555	AQ8201-110 WDM D
556	AQ8201-110 WDM D
557	AQ8201-110 WDM D
558	AQ8201-110 WDM D
559	AQ8201-110 WDM D
560	AQ8201-110 WDM D
561	AQ8201-110 WDM D
562	AQ8201-110 WDM D
563	AQ8201-110 WDM D
564	AQ8201-110 WDM D
565	AQ8201-110 WDM D
566	AQ8201-110 WDM D
567	M310-00-0-20-20 IN-
568	M310-00-0-20-20 IN-
569	M310-00-0-20-20 IN-
570	M310-00-0-20-20 IN-
571	M310-00-0-20-20 IN-
572	M310-00-0-20-20 IN-
573	M310-00-0-20-20 IN-
574	M310-00-0-20-20 IN-
575	M310-00-0-20-20 IN-
576	M310-00-0-20-20 IN-
622	WAVEPRO950 OSC
623	WAVEPRO950 OSC
625	MP1763B PULSE PA
626	MP1764C*01 12.5 GH

Sys No	Description
627	MP1764C ERROR D
629	AQ8201-21 OPTICAL
	AQ8201-13E ECL
651	MO
	AQ8201-13E ECL
652	MO
	AQ8201-13E ECL
653	MO
	AQ8201-13E ECL
654	MO
655	81640A TUNABLE L
658	MODEL 300-04 TEM
659	81633B: OPTICAL P
660	81642A: TUNABLE L
662	D18-05547-02 ORDE
845	1320KM SSMF FIBE
	64 CHANNEL
861	BUTTE
862	FSU 995 FUSION SP
863	8201-11X S-BAND D
864	8201-11X C AND L B
865	8201-11X C AND L B
866	8201-11X C AND L B
867	8201-11X C AND L B
868	8201-11X C AND L B
869	8201-11X C AND L B
870	8201-11X C AND L B
871	8201-11X C AND L B
872	8201-11X C AND L B
873	8201-11X C AND L B
874	8201-11X C AND L B
875	8201-11X C AND L B
876	8201-11X C AND L B
877	MODEL 8201 10 SLO
878	MODEL 8201 10 SLO
879	8201-11X C AND L B
880	8201-11X C AND L B
	LASER
886	MAINFRAME
887	LASER MODULE HP
888	OPTICAL SPECTRU
893	8201-11X C AND L B
894	8201-11X C AND L B
895	8201-11X C AND L B

Sys No	Description
896	8201-11X C AND L B
	400151 XL MF &
902	ENE
908	12.5GHZ SYNTHESI
922	AQ8201-21 OPTICAL
923	AQ8201-21 OPTICAL
924	AQ8201-21 OPTICAL
925	AQ8201-31 ATTENU
926	AQ8201-31 ATTENU
927	AQ8201-31 ATTENU
941	CSA 8000
943	MODEL S012010 FU
960	TRUE WAVE CLASS
	WDM DFB-LD
961	MODU
	WDM DFB-LD
962	MODU
	WDM DFB-LD
963	MODU
	WDM DFB-LD
964	MODU
	WDM DFB-LD
965	MODU
	WDM DFB-LD
966	MODU
	WDM DFB-LD
967	MODU
	WDM DFB-LD
968	MODU
	RACK-MOUNT
969	MAIN
	RACK-MOUNT
970	MAIN
	RACK-MOUNT
971	MAIN
	RACK-MOUNT
972	MAIN
	RACK-MOUNT
973	MAIN
	RACK-MOUNT
974	MAIN
976	SBA LASER BED-OF
977	P/N 6HF2-01554 ISS
	TEKTRONIX
978	TDS303
983	Q7606B TEST SET
997	AQ8201-31 - ATTEN
998	AQ8201-412 - DUAL

Sys No	Description
999	AQ8201-418 - 1X8 O
1000	AQ8201A - RACKM
1004	OPTICAL SPECTRU RACK-MOUNT
1005	MAIN
1008	50MHZ TO 12.5GHZ
1012	AQ8201-418 1X8 OP
1013	AQ8201-422 DUAL 2 WDM DFB-LD
1014	MODU WDM DFB-LD
1015	MODU WDM DFB-LD
1016	MODU WDM DFB-LD
1017	MODU WDM DFB-LD
1018	MODU WDM DFB-LD
1019	MODU WDM DFB-LD
1020	MODU WDM DFB-LD
1021	MODU WDM DFB-LD
1022	MODU WDM DFB-LD
1023	MODU WDM DFB-LD
1024	MODU WDM DFB-LD
1025	MODU WDM DFB-LD
1026	MODU WDM DFB-LD
1027	MODU WDM DFB-LD
1028	MODU WDM DFB-LD
1029	MODU WDM DFB-LD
1030	MODU WDM DFB-LD
1031	MODU WDM DFB-LD
1032	MODU WDM DFB-LD
1033	MODU WDM DFB-LD
1034	MODU

Sys No	Description
1035	WDM DFB-LD MODU
1036	WDM DFB-LD MODU
1037	WDM DFB-LD MODU
1038	WDM DFB-LD MODU
1039	WDM DFB-LD MODU
1040	WDM DFB-LD MODU
1041	WDM DFB-LD MODU
1042	WDM DFB-LD MODU
1043	WDM DFB-LD MODU
1044	WDM DFB-LD MODU
1045	WDM DFB-LD MODU
1046	WDM DFB-LD MODU
1047	WDM DFB-LD MODU
1048	WDM DFB-LD MODU
1049	WDM DFB-LD MODU
1050	WDM DFB-LD MODU
1051	WDM DFB-LD MODU
1052	WDM DFB-LD MODU
1053	WDM DFB-LD MODU
1054	WDM DFB-LD MODU
1055	WDM DFB-LD MODU
1056	WDM DFB-LD MODU
1057	WDM DFB-LD MODU
1058	WDM DFB-LD MODU
1059	WDM DFB-LD MODU

Sys No	Description
1060	WDM DFB-LD MODU
1061	WDM DFB-LD MODU
1062	WDM DFB-LD MODU
1063	WDM DFB-LD MODU
1064	WDM DFB-LD MODU
1065	WDM DFB-LD MODU
1073	AQ8201-21 OPM MO
1074	AQ8201-21 OPM MO
1075	AQ8201-31 ATTENU
1076	AQ8201-31 ATTENU MATCHED CLAD
1079	SIN MATCHED CLAD
1080	SIN MATCHED CLAD
1081	SIN MATCHED CLAD
1082	SIN
1085	AQ6317B OSA-DEM
1095	AQ8201-414 1 X 4 O
1096	AQ8201-422 DUAL 2 33120A FUNCTION
1110	G 34401A
1111	MULTIMETE
1126	AQ8201-03 2 SLOT
1127	AQ8201-03 2 SLOT
1128	AQ8201-31 ATTEN
1129	AQ8201-31 ATTEN
1130	AQ8201-31 ATTEN
1131	AQ8201-31 ATTEN
1132	AQ8201-31 ATTEN
1133	AQ8201-855 3X SP
1134	AQ8201-855 3X SP
1135	AQ8201-891 3X SP
1136	AQ8201-891 3X SP
1137	AQ8201-891 3X SP
1138	AQ8201-891 3X SP
1139	E3631A POWER SU
1140	E3631A POWER SU

Sys No	Description
1141	E3631A POWER SU
1142	E3631A POWER SU
1144	AQ8201-21 OPM M
1145	AQ8203 HALF SIZE
1156	AQ8201-21 OPM M
1157	AQ8201-21 OPM M
1158	AQ8201-21 OPM M
1159	AQ8201-21 OPM M
1160	AQ8201-21 OPM M
1161	AQ8201-21 OPM M
1162	AQ8201-21 OPM M
1163	AQ8201-21 OPM M
1178	AQ6317B OPTICAL AQ8203 3-SLOT
1179	HAL
1180	AQ8201-412 DUAL 1
1181	AQ8201-418 1X8 SW
1182	AQ8201-818 1X8 S
1183	AQ8201-891 3X SP ERBIUM
1187	BROADBAN AGILENT 81642AR
1189	H
1191	30CH 100GHZ AWG
1192	30CH 100GHZ AWG
1193	30CH 100GHZ AWG
1194	30CH 100GHZ AWG
1198	AQ6317C OSA (NE
1199	AQ8201-31 ATTN M
1200	AQ8201-31 ATTN M
1201	AQ8201-31 ATTN M
1202	AQ8201-31 ATTN M
1203	AQ8201-31 ATTN M
1215	81482B TUNABLE AGILENTPN:
1224	81000N
1238	AQ8201-418 1X8 OS
1247	8164AR RMKT LIGH ANDO MODEL
1251	AQ82
1257	81642AR OPT. 72 (
1263	AQ8201-21 OPM M
1264	AQ8201-21 OPM M
1265	RACK-MOUNT

Sys No	Description
	MAIN
	RACK-MOUNT
1266	MAIN
	RACK-MOUNT
1267	MAIN
	RACK-MOUNT
1268	MAIN
	RACK-MOUNT
1269	MAIN
	RACK-MOUNT
1270	MAIN
	WDM DFB-LD
1271	MODU
	WDM DFB-LD
1272	MODU
	WDM DFB-LD
1273	MODU
	WDM DFB-LD
1283	MODU
	WDM DFB-LD
1284	MODU
	WDM DFB-LD
1285	MODU
	WDM DFB-LD
1286	MODU
	WDM DFB-LD
1287	MODU
	WDM DFB-LD
1288	MODU
	WDM DFB-LD
1289	MODU
	WDM DFB-LD
1290	MODU
	WDM DFB-LD
1291	MODU
	WDM DFB-LD
1292	MODU
	WDM DFB-LD
1293	MODU
	WDM DFB-LD
1294	MODU
	WDM DFB-LD
1295	MODU
	WDM DFB-LD
1296	MODU
	WDM DFB-LD
1297	MODU
	WDM DFB-LD
1298	AQ8201-412 DUAL 1
1299	AQ8201-412 DUAL 1
1300	WDM DFB-LD

Sys No	Description
	MODU
	WDM DFB-LD
1301	MODU
	WDM DFB-LD
1302	MODU
	WDM DFB-LD
1303	MODU
	WDM DFB-LD
1304	MODU
	WDM DFB-LD
1305	MODU
	WDM DFB-LD
1306	MODU
	WDM DFB-LD
1307	MODU
	WDM DFB-LD
1308	MODU
	WDM DFB-LD
1309	MODU
1318	OPTICAL ATTENUA
1323	81636BR FAST OPT WDM DFB-LD
1326	MODU
1330	AQ8021-13E TUNA
1332	AQ8021-13E TUNA
1333	WAVESPLITTER PN
1335	VIDEO INSPECTION WDM DFB-LD
1368	MODU
	WDM DFB-LD
1369	MODU
	WDM DFB-LD
1370	MODU
	WDM DFB-LD
1371	MODU
	WDM DFB-LD
1372	MODU
	WDM DFB-LD
1373	MODU
	WDM DFB-LD
1374	MODU
	WDM DFB-LD
1375	MODU
	WDM DFB-LD
1376	MODU
	WDM DFB-LD
1377	MODU
	WDM DFB-LD
1378	MODU

Sys No	Description
1379	WDM DFB-LD MODU
1380	WDM DFB-LD MODU
1381	WDM DFB-LD MODU
1382	WDM DFB-LD MODU
1383	WDM DFB-LD MODU
1384	WDM DFB-LD MODU
1385	WDM DFB-LD MODU
1386	WDM DFB-LD MODU
1387	WDM DFB-LD MODU
1388	WDM DFB-LD MODU
1389	WDM DFB-LD MODU
1390	WDM DFB-LD MODU
1391	WDM DFB-LD MODU
1392	WDM DFB-LD MODU
1393	WDM DFB-LD MODU
1394	WDM DFB-LD MODU
1395	WDM DFB-LD MODU
1396	WDM DFB-LD MODU
1397	WDM DFB-LD MODU
1398	WDM DFB-LD MODU
1408	AQ8201-02 DISPLAY
1411	AQ8201-43 1X12 OP
1412	PART NO. AQ8201-0
1413	PART NO. AQ8201-2
1414	PART NO. AQ8201-4
1415	PART NO. AQ8201A
1445	Polarization Analyzer
1446	Signal Generator
1452	Tunable LD Light Sou

Sys No	Description
1454	Function Generator
1458	Labview Full Dev Sys
1493	PART NO. AQ6317C
1496	AG8201-43 1X12 OP
1497	AQ8201-02 DISPLAY
1513	AQ8201-412 DUAL 1
1514	AQ8201A RACK MO
	AQ8201-31
1521	VARIABL
	AQ8201-31
1522	VARIABL
	AQ8201-31
1523	VARIABL
	AQ8201-31
1524	VARIABL
	AQ8201-31
1525	VARIABL
1526	AQ6317C OSA
1527	AQ8201-21 OPTICAL
1532	WESTOVER CAT. N
1550	AQ8201-43 1X12 SW
1568	NETTEST OTDR TD
1569	AQ8201-13E (MODU
1613	403338; OC192 UNIP
1647	ANDO AQ8201-21/ Q
1648	ANOE AQ8201-31/ Q
1656	ANDO AQ8201-21/ O
1687	ANDO ATTENUATO
1704	EBS-4022; FLAT HIG
1705	ANDO AQ6331;RT/ P
1706	ANDO AQ6331;RT/ P
1707	ANDO AQ6331;RT/ P
1711	EBS-7514; ERBIUM
1712	BTI PN: BP1A42AA/
860	P/N DS345: 30 MHZ
1686	ANDO AQ8201-02; D
2095	8RU SHELF
2107	8RU SHELF
2108	8RU SHELF
2109	8RU SHELF
2100	8RU SHELF
2110	8RU SHELF
2101	8RU SHELF
2111	8RU SHELF

Sys No	Description
2557	8RU SHELF
2556	8RU SHELF
2112	8RU SHELF
2113	8RU SHELF
2114	8RU SHELF
2096	8RU SHELF
2115	8RU SHELF
2097	RMM, APM (ES DES
2116	RMM, APM (ES DES
2117	RMM, APM (ES DES
2617	RMM, PDU-T5
	EXPANSION
2118	MODUL
	RMM, AMPLIFIER
2119	SH
	EXPANSION
2120	MODUL
2640	SHELF FAN 8 RU SH
2639	SHELF FAN 8 RU SH
2158	SHELF FAN 8 RU SH
2159	SHELF FAN 8 RU SH
2160	SHELF FAN 8 RU SH
2161	SHELF FAN 8 RU SH
2162	SHELF FAN 8 RU SH
2144	SHELF FAN 8 RU SH
2178	SHELF FAN 8 RU SH
2179	SHELF FAN 8 RU SH
2180	SHELF FAN 8 RU SH
2145	SHELF FAN 8 RU SH
2181	SHELF FAN 8 RU SH
2182	SHELF FAN 8 RU SH
2183	SHELF FAN 8 RU SH
2146	SHELF FAN 8 RU SH
2147	SHELF FAN 8 RU SH
2148	SHELF FAN 8 RU SH
2149	SHELF FAN 8 RU SH
2150	SHELF FAN 8 RU SH
2184	SHELF FAN 8 RU SH
2185	SHELF FAN 8 RU SH
2186	SHELF FAN 8 RU SH
2187	SHELF FAN 8 RU SH
2188	SHELF FAN 8 RU SH
2189	SHELF FAN 8 RU SH
2190	SHELF FAN 8 RU SH

Sys No	Description
2191	SHELF FAN 8 RU SH
2151	SHELF FAN 8 RU SH
2163	SHELF FAN 8 RU SH
2192	SHELF FAN 8 RU SH
2193	SHELF FAN 8 RU SH
2164	SHELF FAN 8 RU SH
2165	SHELF FAN 8 RU SH
2166	SHELF FAN 8 RU SH
2194	SHELF FAN 8 RU SH
2167	SHELF FAN 8 RU SH
2195	SHELF FAN 8 RU SH
2635	SHELF FAN 8 RU SH
2641	SHELF FAN 8 RU SH
2638	SHELF FAN 8 RU SH
2196	SHELF FAN 8 RU SH
2197	SHELF FAN 8 RU SH
2198	SHELF FAN 8 RU SH
2634	SHELF FAN 8 RU SH
2637	SHELF FAN 8 RU SH
2636	SHELF FAN 8 RU SH
2199	SHELF FAN 8 RU SH
2152	SHELF FAN 8 RU SH
2153	SHELF FAN 8 RU SH
2200	SHELF FAN 8 RU SH
2201	SHELF FAN 8 RU SH
2202	SHELF FAN 8 RU SH
2203	SHELF FAN 8 RU SH
2204	SHELF FAN 8 RU SH
2205	SHELF FAN 8 RU SH
2206	SHELF FAN 8 RU SH
2207	SHELF FAN 8 RU SH
2208	SHELF FAN 8 RU SH
2209	SHELF FAN 8 RU SH
2210	SHELF FAN 8 RU SH
2211	SHELF FAN 8 RU SH
2098	RMM, PDU-T5
2121	RMM, PDU-T5
2618	RMM, PDU-T5
2122	RMM, PDU-T5
2123	RMM, PDU-T5
2102	RMM, PDU-T5
2103	RMM, PDU-T5
2124	RMM, PDU-T5

Sys No	Description
	EXPANSION
2125	MODUL
	RMM, AMPLIFIER
2126	SH
2212	SHELF FAN 8 RU SH
2213	SHELF FAN 8 RU SH
2214	SHELF FAN 8 RU SH
2215	SHELF FAN 8 RU SH
2216	SHELF FAN 8 RU SH
2217	SHELF FAN 8 RU SH
2218	SHELF FAN 8 RU SH
2219	SHELF FAN 8 RU SH
2220	SHELF FAN 8 RU SH
2221	SHELF FAN 8 RU SH
2222	SHELF FAN 8 RU SH
2223	PIU, 8RU ALARMS
2224	PIU, 8RU ALARMS
2168	PIU, 8RU ALARMS
2169	PIU, 8RU ALARMS
2225	PIU, 8RU ALARMS
2226	PIU, 8RU ALARMS
2227	PIU, 8RU ALARMS
2228	PIU, 8RU ALARMS
2229	PIU, 8RU ALARMS
2230	PIU, 8RU ALARMS
2579	PIU, 8RU ALARMS
2231	PIU, 8RU ALARMS
2232	PIU, 8RU ALARMS
2580	PIU, 8RU ALARMS
2585	PIU, OSC (ES DESIG
2154	PIU, OSC (ES DESIG
2155	PIU, OSC (ES DESIG
2233	PIU, OSC (ES DESIG
2587	PIU, OSC (ES DESIG
2286	PIU, OSC (ES DESIG
2586	PIU, OSC (ES DESIG
2127	PIU, OSC (ES DESIG
	AMPLIFIER SHELF
2563	C
	AMPLIFIER SHELF
2234	C
	AMPLIFIER SHELF
2235	C
2236	EXPANSION

Sys No	Description
	MODUL
	AMPLIFIER SHELF
2237	C
	AMPLIFIER SHELF
2238	C
	AMPLIFIER SHELF
2239	C
	AMPLIFIER SHELF
2240	C
	AMPLIFIER SHELF
2241	C
	AMPLIFIER SHELF
2242	C
	RMM, AMPLIFIER
2890	SH
	RMM, AMPLIFIER
2128	SH
	EXPANSION
2129	MODUL
	EXPANSION
2130	MODUL
	RMM, AMPLIFIER
2131	SH
	EXPANSION
2565	MODUL
	EXPANSION
2243	MODUL
	EXPANSION
2244	MODUL
	EXPANSION
2245	MODUL
	EXPANSION
2246	MODUL
	EXPANSION
2247	MODUL
	EXPANSION
2248	MODUL
	EXPANSION
2249	MODUL
	EXPANSION
2250	MODUL
	EXPANSION
2251	MODUL
	AMPLIFIER SHELF
2252	C
	AMPLIFIER SHELF
2253	C
	AMPLIFIER SHELF
2254	C
	AMPLIFIER SHELF
2255	AMPLIFIER SHELF



Sys No	Description
	C
2256	AMPLIFIER SHELF C
2257	AMPLIFIER SHELF C
2258	AMPLIFIER SHELF C
2259	AMPLIFIER SHELF C
2260	8RU SHELF CONTR
2261	8RU SHELF CONTR
2262	8RU SHELF CONTR
2263	8RU SHELF CONTR
2561	8RU SHELF CONTR
2264	8RU SHELF CONTR
2265	8RU SHELF CONTR
2266	8RU SHELF CONTR
2170	8RU SHELF CONTR
2560	8RU SHELF CONTR
2171	8RU SHELF CONTR
2267	8RU SHELF CONTR
2268	8RU SHELF CONTR
2156	8RU SHELF CONTR
2157	8RU SHELF CONTR
2269	RMM, OCHM-A, SING
2270	RMM, OCHM-A, SING
2271	RMM, OCHM-A, SING
2828	RMM, OCHM-A, SING
2272	RMM, OCHM-A, SING
2273	RMM, OCHM-A, SING
2274	RMM, OCHM-A, SING
2275	RMM, OCHM-A, SING
2276	RMM, OCHM-A, SING
2104	RMM, FUSE PANEL
2099	RMM, FUSE PANEL
2105	RMM, FUSE PANEL EXPANSION
2132	MODUL

Sys No	Description
2133	RMM, AMPLIFIER SH
2287	PIU, EDFA OPTICAL
2288	PIU, EDFA OPTICAL
2289	PIU, EDFA OPTICAL
2907	PIU, EDFA Optical Am
2582	PIU, EDFA OPTICAL
2583	PIU, EDFA OPTICAL
2584	PIU, EDFA OPTICAL
2875	ASSEMBLY, Z4 ETS RMM, 9 PORT
2277	ROAD RMM, 9 PORT
2278	ROAD
2279	RMM, 9 PORT ROAD
2172	RMM, APM (ES DES
2173	RMM, APM (ES DES
2609	RMM, APM (ES DES PIU, DUAL OSC
2106	FILT PIU, DUAL OSC
2134	FILT PIU, DUAL OSC
2135	FILT
2611	RMM, FSU-I
2612	RMM, FSU-I PIU, EGM CORE,
2136	40K PIU, EGM CORE,
2137	40K
2138	PIU, EGM, SE80S, 80
2139	PIU, EGM, SE80S, 80
2140	PIU, EGM, SE80S, 80
2141	PIU, EGM, SE80S, 80
2280	RMM, APM (ES DES
2142	RMM, APM (ES DES
2282	PIU, EDFA OPTICAL
2283	PIU, EDFA OPTICAL
2284	PIU, DUAL 50/50 CO
2174	PIU, EDFA OPTICAL
2175	PIU, EDFA OPTICAL
2176	PIU, EDFA OPTICAL
2177	PIU, EDFA OPTICAL
2143	RMM, APM (ES DES

Sys No	Description
2297	RMM, OCHM-A, SING
2295	RMM, OCHM-A, SING
2302	RMM, OCHM-A, SING
2294	RMM, OCHM-A, SING
2301	RMM, OCHM-A, SING
2296	RMM, OCHM-A, SING
2292	RMM, APM (ES DES
2291	RMM, APM (ES DES RMM, OCHM-A,
2299	SING RMM, OCHM-A,
2293	SING RMM, OCHM-A,
2298	SING RMM, OCHM-A,
2300	SING
2307	100G MUX-A Transp
2308	100G MUX-A Transp
2309	100G MUX-A Transp
2310	100G MUX-A Transp
2311	100G MUX-A Transp
2312	100G MUX-A Transp
2313	100G MUX-A Transp
2314	100G MUX-A Transp
2315	100G MUX-A Transp
2316	100G MUX-A Transp
2317	100G MUX-A Transp
2318	100G MUX-A Transp
2319	100G MUX-A Transp
2326	Optical Protection Sw
2327	Optical Protection Sw
2945	RMM, OPSM-XP 170
2328	Optical Protection Sw
2329	Optical Protection Sw
2330	Optical Protection Sw
2331	Optical Protection Sw
2332	Optical Protection Sw
2333	Optical Protection Sw
2334	Optical Protection Sw
2335	Optical Protection Sw

Sys No	Description
2361	PIU, DUAL 50/50 CO
2349	RMM, APM (ES DES
2350	RMM, APM (ES DES
2376	PIU, EDFA OPTICAL
2377	PIU, EDFA OPTICAL
2378	PIU, EDFA OPTICAL
2393	RMM, APM (ES DES
2403	HP 86120C MULTI- W
2410	PIU, TSC
2411	8RU SHELF CONTR AMPLIFICATION
2408	MO
2409	AMPLIFICATION MO
2420	HP LaserJet Enterpri
2419	HP LaserJet Enterpri
2421	HP LaserJet Enterpri
2424	HP LaserJet Enterpri
2416	RMM, LINEAMP- SSM
2418	RMM, LINEAMP- SSM
2415	RMM, LINEAMP- SSM
2417	RMM, LINEAMP- SSM
2414	RMM, LINEAMP- SSM
2425	HP LaserJet Enterpri
2439	Spirent Netcom PIU EDFA Optical
2481	Am PIU EDFA Optical
2482	Am PIU EDFA Optical
2483	Am PIU EDFA Optical
2484	PIU, Dual 50/50 Coup
2485	PIU, Dual 50/50 Coup
2494	160-3510-012 PIU O
2495	160-3510-012 PIU O
2496	160-3510-012 PIU O
2497	160-3510-012 PIU O
2498	160-3510-012 PIU O
2499	160-3510-012 PIU O
2500	160-3510-012 PIU O

Sys No	Description
2501	160-3510-012 PIU O
2502	160-3510-012 PIU O
2503	160-3510-012 PIU O
2492	160-3510-012 PIU O
2504	160-3510-012 PIU O
2505	160-3510-012 PIU O
2506	160-3510-012 PIU O
2507	160-3510-012 PIU O
2493	160-3510-012 PIU O
2510	160-3510-012 PIU O
2513	160-3360-102
2512	160-3360-102
2632	SBA 2D2
2614	RMM, LINEAMP,EWB
2613	RMM, FSU-I
2606	RMM, 1RU EGM SHE
2607	RMM, 1RU EGM SHE
2581	PIU, CARTRIDGE, O
2574	OPTICS ASSY, CAR
2786	OPTICS ASSY, CAR
2559	8RU SHELF
2562	8RU SHELF CONTR TUNABLE TXPIIBP
2655	W TUNABLE TXPIIBP, C
2656	TUNABLE EFEC TXP
2647	TUNABLE EFEC TXP
2645	TUNABLE TXPIIBP W
2652	TUNABLE TXPIIBP W
2651	TUNABLE TXPIIBP W
2569	OC192 TUNABLE EF TUNABLE TXPIIBP
2653	W TUNABLE TXPIIBP W
2654	TUNABLE TXPIIBP W
2553	8RU SHELF
2620	RMM, TRANSPOND
2625	SBA 1D1
2626	SBA 1D1

Sys No	Description
2619	RMM, SBA, 1D3-2S TUNABLE EFEC
2649	TXP TUNABLE EFEC TXP
2755	TUNABLE EFEC TXP
2861	TUNABLE EFEC TXP
2648	TUNABLE EFEC TXP
2575	PIU, 10G, MULTIRAT
2576	PIU, 10G, MULTIRAT
2577	PIU, 10G, MULTIRAT
2646	TUNABLE EFEC TXP
2546	8RU SHELF CONTR
2568	OC192 TUNABLE EF
2564	APM-I
2633	SBA 2D2
2624	SA1-2S-D3
2623	SA1-2S-D3
2629	SBA 1D4-2S
2642	SHELF,MASTER,OT
2643	SHELF,MASTER,OT
2621	SA1-2S-D3
2631	SBA 1D4-2S
2622	SA1-2S-D3
2628	SBA 1D4-2S
2566	IA1-DF-D2
2627	SBA 1D4-2S
2570	OPTICS ASSY, CAR
2567	IA1-DF-D2
2630	SBA 1D4-2S
2597	RMM, AMPLIFIER SH
2596	RMM, AMPLIFIER SH
2598	RMM, AMPLIFIER SH
2595	RMM, AMPLIFIER SH
2603	RMM, AMPLIFIER SH
2599	RMM, AMPLIFIER SH

Sys No	Description
2604	RMM, AMPLIFIER SH
2602	RMM, AMPLIFIER SH
2605	RMM, AMPLIFIER SH
2601	RMM, AMPLIFIER SH
2600	RMM, AMPLIFIER SH
2558	8RU SHELF
2555	8RU SHELF
2552	8RU SHELF
2551	8RU SHELF
2554	8RU SHELF
2608	RMM, APM (ES DES
2610	RMM, APM (ES DES
2590	RMM, 9 PORT ROAD
2592	RMM, 9 PORT ROAD
2594	RMM, 9 PORT ROAD
2589	RMM, 9 PORT ROAD
2588	RMM, 9 PORT ROAD
2591	RMM, 9 PORT ROAD
2593	RMM, 9 PORT ROAD
2615	RMM, OCHM-A, DUA
2650	TUNABLE EFEC TXP
2756	TUNABLE EFEC TXP
2862	TUNABLE EFEC TXP
2644	TUNABLE EFEC TXP
2750	TUNABLE EFEC TXP
2856	TUNABLE EFEC TXP
2572	OPTICS ASSY, CAR
2678	OPTICS ASSY, CAR
2784	OPTICS ASSY, CAR
2571	OPTICS ASSY, CAR

Sys No	Description
2677	OPTICS ASSY, CAR
2783	OPTICS ASSY, CAR
2892	PIU, FBG DCU, 40KM
2891	RMM, 1RU EGM SHE
2889	ASSEMBLY, Z4 ETS
2886	RMM, PDU-T5
2883	RMM, FUSE PANEL
2884	RMM, FUSE PANEL
2888	ASSEMBLY, Z4 ETS
2887	RMM, PDU-T5
2882	RMM, FUSE PANEL
2885	RMM, FUSE PANEL
2878	UNIVERSAL MUXPO
2879	UNIVERSAL MUXPO
2880	UNIVERSAL MUXPO
2881	UNIVERSAL MUXPO
2922	For Staging at MCA m
2931	RMM, APM (ES DES
2912	For Staging at MCA m
2913	For Staging at MCA m
2915	For Staging at MCA m
2916	For Staging at MCA m
2917	For Staging at MCA m
2918	For Staging at MCA m
2919	For Staging at MCA m
2920	For Staging at MCA m
2921	For Staging at MCA m
2466	EXFO Test Kit
2937	160-6002-101 ; Node
2938	160-6002-101 ; Node
2983	HFE Power Rectifier
2988	PIU, EDFA OPTICAL
2989	PIU, EDFA OPTICAL
3046	PIU, Cartridge, OSC,
3047	PIU, Cartridge, OSC,
3048	PIU, Cartridge, OSC,
3049	PIU, Cartridge, OSC,
3415	ASSEMBLY, Z4 ETS

Sys No	Description
3414	ASSEMBLY, Z4 ETS
3409	EXPANSION MODUL
3418	RMM, 9 PORT ROAD
3419	RMM, 9 PORT ROAD
3420	RMM, 9 PORT ROAD
3421	RMM, 9 PORT ROAD
3417	RMM, 9 PORT ROAD
3410	EXPANSION MODUL
3368	RMM, OPSM-XP (17
3366	RMM, OPSM-XP (17
3367	RMM, OPSM-XP (17
3416	PIU, MDM30-30, EN
3424	RMM, 9 PORT ROAD
3425	RMM, 9 PORT ROAD
3426	RMM, 9 PORT ROAD
3427	RMM, 9 PORT ROAD
3423	RMM, 9 PORT ROAD
3405	PIU, MDM30-10 (160
3404	PIU, MDM30-10 (160
3406	PIU, MDM30-10 (160
3407	PIU, MDM30-10 (160
3422	RMM, 9 PORT ROAD
3408	EXPANSION MODUL
3352	EXPANSION MODUL
3351	EXPANSION MODUL
3411	EXPANSION MODUL
3412	EXPANSION MODUL

Sys No	Description
3413	EXPANSION MODUL EXPANSION MODUL
3285	160-2001-101 PIU, E
3286	160-2001-101 PIU, E
3287	160-2001-101 PIU, E
3288	160-2001-101 PIU, E
3289	160-2001-101 PIU, E
3290	160-2001-101 PIU, E
3291	160-2001-101 PIU, E
3292	160-2001-101 PIU, E
3293	160-2001-101 PIU, E
3294	160-2001-101 PIU, E
2285	PIU, 8RU ALARMS
2379	SFP, SR OC-48 (STM
2391	SIDE PANEL, QSN A
2392	100A RECTIFIER
1995	Small Tools Equipme
2027	Small Tools Equipme
2035	Small Tools Equipme
2036	Small Tools Equipme
2047	Proto Mat'l issued to
2422	JDS IR XFP's for UM
2449	MSA Compliant 100G
2870	SHELF FAN 8 RU SH
2869	ERBIUM LP980 FIBE
2871	LASER, ITLA MODU
2874	DCM FILTER SMF-8 8 KITS FOR
2929	CUSTOM
2942	XFP 1310NM TRANS XFP 1310NM TRANS
2943	SHELF FAN 8 RU SH
2944	PIU, FAN, TRANSP
3033	New asset for capita
748	WEB Server-Ten
780	CISCO 3548 10/100
781	CISCO GBIC SC-CS
783	CISCO 4006 GB MO
1761	Office Furniture
2320	Executive Office Furn CUSTOM LAB
122	BENC

Sys No	Description
124	AV RACK & EQUIPM
125	LIGHTED EXTERIOR CUBICLE
127	FURNITUR CUBICLE
128	FURNITUR FAMILY ROOM
129	CHA FAMILY ROOM &
130	PR
131	OFFICE FURNITURE CUBICLE
132	FURNITUR
133	-2 4-DRAWER LATE
134	LAB FURNITURE &
135	LAB FURNITURE &
136	LAB FURNITURE &
137	LAB FURNITURE &
140	FILE CABINETS
440	FURNITURE-BUILD
479	PER ATTACHED QU
670	Office Furniture
885	ESD CHAIRS
1690	OPTIPLEX GX620 M
1734	OptiPlex 755 Minitow
1735	OptiPlex 755 Minitow
1736	OptiPlex 755 Minitow
1737	OptiPlex 755 Minitow
1742	OptiPlex 755 Minitow
1743	OptiPlex 755 Minitow
1744	OptiPlex 755 Minitow
1745	OptiPlex 755 Minitow
1773	XPS M1530 Intel Cor
1926	V210 Server
1927	Server
1928	Server
1929	Sunfire V210 Server
1930	V210 Server for Softw
1931	V210 Server for Softw
1770	QUAD CORE XEON
1771	QUAD CORE XEON
1780	OptiPlex 755 Minitow
1781	OPTIPLEX 755 MINI

Sys No	Description
1782	OPTIPLEX 755 MINI
1806	OPTIPLEX 755 MINI
1807	OPTIPLEX 755 MINI
1805	Dell Latitude D630
1801	DELL LATITUDE D6
1802	Latitude D630
1803	STOREVAULT S550
1804	Dell Latitude D630
1812	DELL LATITUDE D6
1813	Dell Latitude D630
1814	Dell Latitude D630
1817	DELL LATITUDE D6
1818	Dell Latitude D630
1819	Dell Latitude D630
1821	Dell Latitude D630
1828	HP Digital Sender 92
1839	DELL PN: 223-5763
1855	DELL PN 223-5763 L
1856	Dell PN 223-5763 lap
1857	Dell PN 223-5763 La
1858	Dell PN 223-5763 La
1863	Sunfire T2000
1864	Sunfire T2000
1866	NetApp
1895	Test PCs
1896	Test PC
1878	Qty 6 - 17" flat panel s
1885	Test PCs
1886	Test PC
	DELL QUAD CORE Z
1912	Z
1915	Latitude E4200, Intel
1944	Dell PowerEdge R71
1956	Lattitude E6400
1957	Optiplex 780 Minitow
1960	PowerEdge R710 wit
1962	2 X T5120 Sun Serve
1964	Dell Lattitude E6410
1965	Scan Express Runne
1966	ScanExpress ADO
1967	ScanExpress Debugg
1969	Dell Latitude E6410
1971	NetApp backup

Sys No	Description
1972	Dell Latitude E6410
1977	544844942 Dell Latitu
2037	New Color Printer He
2088	Dell Latitude E6420 -
2089	Dell Latitude E6420 -
2091	OptiPlex 790 Minitow
2045	Desktop for CETS at
2060	Projector for Board R
2078	Travel Adapters
2079	Travel Adapters
2080	Travel Adapters
2081	Travel Adapters
2082	Travel Adapters
2072	Desktop and Cards fo
2073	Desktop and Cards fo
2071	Desktop and Cards fo
2066	replacement UPS bat
2068	Dell Latitude E6320
2069	Dell Latitude E6320
2070	Dell Latitude E6320
2092	OptiPlex 790 Minitow
2093	OptiPlex 790 Minitow
2094	OptiPlex 790 Minitow
2303	OptiPlex 790 Minitow
2304	OptiPlex 790 Minitow
2305	Dell Latitude E6320
2323	OptiPlex 790 Minitow
2324	OptiPlex 790 Minitow
2325	Dell Latitude E6320
2362	Dell Latitude E6420 -
2384	Dell Latitude E6320
2385	OptiPlex 790 Minitow
2398	Dell Latitude E6320
2401	OptiPlex 790 Minitow
2402	OptiPlex 790 Minitow 3M PRIVACY FILTER
2407	
2404	OPTIPLEX 7010 MIN
2405	OPTIPLEX 7010 MIN
2406	OPTIPLEX 7010 MIN
2412	SonicWALL SonicPo
2433	Dell Professional P23
2434	Dell Professional P23

Sys No	Description
2435	Dell Professional P23
2438	Dell Latitude E6330
2471	E Series E2313H - LE
2486	Hewlett Packard - Pa
2487	Dell - Part#: 225-3403
2489	Dell - Part#: 6545753
2490	Dell - Part#: 6544282
2550	NetApp expansion sh
2899	PowerEdge R720 (Da
2901	Leo, Massimo Laptop
2903	Dell Latitude - Core i5
2904	E-Port, 130W Simple
2905	E-Port, 130W Simple
2909	LTO-3 MLM TeraPac
2910	3 Year Warranty 6-Ce
2911	Dell 65 Watt Slim Aut
2932	Barracuda Message A
2933	NetApp S550 Storeva
2934	NetApp S550 Storeva
2935	NetApp S550 Storeva
2936	NetApp S550 Storeva
2941	Server for Manufactu
2951	PowerEdge R520
2959	Dell SonicWALL - Ra Dell SonicWALL TZ 2
2960	
2961	Latitude 14 I5-4310U Dell SonicWALL TZ 2
2962	
2963	Latitude 14 I5-4310U
2964	Latitude 14 I5-4310U
2965	Latitude 14 I5-4310U
2975	Latitude 14 I5-4310U
2977	Latitude 14 I5-4310U
2973	Dell Latitude E7240-U
2987	BTO - Optiplex 7020
2995	Dell M3800
2996	Dell Latitude E7250
3001	Dell Laptop
3007	Dell Latitude E7450/7
3021	Dell Latitude E7450
3022	Dell Latitude E7450
3023	Dell Latitude E7450

Sys No	Description
3024	Dell Latitude E7450
3025	Dell Latitude E7450
3027	CISCO2911/K9
3028	PWR-2911-DC
3029	SM-X-ES3-16-P
3030	CON-SNT-2911
3034	CISCO2911/K9
3035	CISCO2911/K9
3036	CISCO2911/K9
3037	PWR-2911-DC
3038	PWR-2911-DC
3039	PWR-2911-DC
3040	SM-X-ES3-16-P
3041	SM-X-ES3-16-P
3042	SM-X-ES3-16-P
3043	CON-SNT-2911
3044	CON-SNT-2911
3045	CON-SNT-2911
3226	APC Symmetra Powe
3227	APC Symmetra Powe
3220	OptiPlex 7020 MT BT
3221	Dell Latitude E7450/7
3225	OptiPlex 7020 MT BT
3231	Dell Latitude E7450/7
3233	Dell Latitude E7450/7
3234	Dell Latitude E7450/7
3232	PowerEdge R630 Se
3236	Dell Latitude E7450 -
3239	Dell Latitude E7450 -
3240	Dell Latitude E7450 -
3241	Dell Latitude E7450 -
3235	OptiPlex 7020 MT BT
3238	OptiPlex 7020 MT BT
3279	EDS01612N-02
3300	Employee Laptop - V
3314	Dell OptiPlex 3040-S
17	LASER JET BW8100
57	CISCO 24 PORT 350
58	CISCO 3548 100/100 NETWORK
78	INFRAST NETWORK
79	INFRAST

Sys No	Description
80	NETWORK INFRAST
81	NETWORK INFRAST
82	NETWORK INFRAST
83	NETWORK INFRAST
84	CATALYST 4000 CH
93	HP LASERJET 8100
97	HP LASERJET PRIN
101	BW 8100 N LASERJE
109	HP LASERJET PRIN
115	2 SYSADMIN
116	HP LAZERJET8100
426	HP NETSERVER
435	WS-C3548-XL-EN CI
436	WS-X4306
466	HP LASERJET 8150
468	CISCO CATALYST 3
656	CISCO LAYER-3 SW
915	CISCO CATALYST 4
916	CISCO CATALYST 4
917	CISCO CATALYST 6
945	SRVR CPQ PRO DL3 CPQ SMART
947	ARRAY
985	COMPUTERS FOR T SUN BLADE 1000 -
1007	A
1010	COMPAQ DL 380 SE
1092	MS WINDOWS 2000
1100	CISCO WS-C3524-X A36UQE1Z9U-
1120	D128C
1166	QOUTE: 7345600 T
1190	SUN 280R - AS PER
1213	CISCO 2621 MODUL
1232	SYMMETRA 12KVA
1237	DELL POWEREDGE
1310	REF. QUOTE 839555
1311	REF. QUOTE 839555
1312	REF. QUOTE 839555
1328	COMPUTER SYSTE
1334	POWEREDGE 2650

Sys No	Description
1340	SUN STOREDGE IN
1399	L20 TAPE LIBRARY
1400	SUN STOREDGE T3
1423	REF. DELL QUOTE#
1443	2 Printers HP Laser je
1467	High Resolution Stere
1470	HP Business
1499	DELL POWEREDGE
1500	DELL POWEREDGE
1545	CISCO 3550 48-POR
1573	SONICWALL 3060 P
1580	LANTRONIX 32 POR
1618	DELL POWEREDGE REPLACEMENT
1619	TAP
1620	RACK & ACCESSOR QLOGIC ISCSI PCI-
1640	X ITEM NUMBER: 6302
1641	LATITUDE D610/ QU
1655	SONICWALL SSL VP
1668	LATITUDE D620 INT
1678	OPTIPLEX GX620 M
1681	OPTIPLEX GX620 M
1682	OPTIPLEX GX620 M
1691	OPTIPLEX GX620 M
1692	OPTIPLEX GX620 M
1693	OPTIPLEX GX620 M
1694	OPTIPLEX GX620 M
1698	QUAD CORE XEON
1699	QUAD CORE XEON
1700	QLOGIC PCIX ISCSI
1702	QUAD CORE XEON
1708	Quad Core Xeon Pro
1709	Quad Core Xeon Pro
1713	OPTIPLEX 755 MINI
1715	OPTIPLEX 755 MINI
1716	OPTIPLEX 755 MINI LATITUDE D630
1717	INT LATITUDE D630
1718	INT

Sys No	Description
2064	Dell Latitude E6320
2087	Dell Latitude E6420 -
2086	Dell Latitude E6420 -
2085	Dell Latitude E6420 -
2077	OptiPlex 790 Minitow
2076	OptiPlex 790 Minitow
2075	OptiPlex 790 Minitow
2090	OptiPlex 790 Minitow
2084	Dell Latitude E6420 -
2067	Dell Latitude E6320
2065	Dell Latitude E6320
2083	Dell Latitude E6420 -
2063	Dell Latitude E6220
2074	OptiPlex 790 Minitow
2062	OptiPlex 790 Minitow
2061	OptiPlex 790 Minitow
2380	OptiPlex 790 Minitow
2381	OptiPlex 790 Minitow
2382	Dell Latitude E6320
2383	Dell Latitude E6320
2437	Dell Latitude E6330
2436	Dell Latitude E6330
2453	Dell Latitude E6330
2479	Dell Latitude E6430 C
2472	E Series E2313H - LE
2478	Dell Latitude E6430 C
2473	E Series E2313H - LE
2470	E Series E2313H - LE
2477	Dell Latitude E6430 C
2480	Dell Latitude E6430 C
2515	Dell - Part#: 469-3146
2523	OPTIPLEX 7010 MIN
2525	OPTIPLEX 7010 MIN
2524	OPTIPLEX 7010 MIN
2902	LG ZD-360-GD30K L
2984	BTO - Optiplex 7020 TP-LINK TL-
2442	WR702N BACKUP TAPES - LT
2452	LT
2474	Crt Monitor Stand Fo ULTRIUM
2930	UNIVERSA
321	1185 DESIGN

Sys No	Description
322	WSG
323	CORPORATE PATE
324	CORPORATE PATE
1750	SYSTEM MANAGER
1753	Profiler Server Base L
1914	MAS System Manage
1897	X-Win 32 Upgrades
1910	-4 ClearTrigger Licen
1911	-4 ClearReplica Lice
1948	QNX Software Develo
1949	QNX Software Develo
1992	SW for Coherent 40G
2029	Enterprise Servers
2028	New Asset for Capita
2046	Teststand Debug De
2387	Xtera.com Website D
2465	ModelSim DE/VHDL
2467	Xtera.com Arabic We
2514	SW-QUARTUS-SE-F
2538	vSphere Standard Lic
2876	BizNet WorkGroup B
2939	vSphere Standard Lic
2940	vSphere Standard Lic
2953	Creo Essentials
2954	Creo Essentials
3019	ModelSim License Up
3245	500-166033 Wind Riv
3246	500-166033 Wind Riv
3250	MathCAD renewal
3313	New Website 2015
143	OSE SOFTKERNAL
145	USB STACK WITH P
148	VISIONICE II DRIVEWAY:8260
149	LIC
152	DESIGN SOFTWARE
153	FLOTHERM SOFTW LISC &
158	MAINTENAN
159	PCB DESIGN EXPER
160	GRAPHIC STATION
161	OPTIMA PROGRAM ORCAD
167	SCHEMATIC

Sys No	Description
168	GENESYS/EM V.7.0
173	NI DEVELOPER SUI
174	VISIO 2000 LICENSE
425	MISC SOFTWARE
475	VISIONICE II WITH V
527	MULITI DEBUGGER 1 COPY OF
883	AUTOCA
936	SOFTWARE DESIGN MATLAB EXCEL
995	BUI
1188	TEMP LICENSE FOR
1403	Cisco HIDS CON
1472	software
1473	Essential Macleod v 8
1475	ANSYS Connection f
1554	Comerica Leasing - R
1555	Comerica Leasing - R
1556	Comerica Leasing - R
1558	Comerica Leasing - R
1583	S030BX; SYNPLIFY
1623	NETAPP FAS3020 P
1701	MICROSOFT SQL SE
1939	PC test cards for wt
1990	New Asset for Capita
1999	New Asset for Capita
2026	Dell - Part#: 224-8671
2038	New Asset for Capita
3249	Server Room Cables
1752	Install 3Com Phone S Install 3Com Phone S
1973	Air Conditioning Unit
1974	Air Conditioning Unit
3002	9 Rooftop HVAC Unit
3003	HVAC Replacement P
3004	HVAC Replacement P
3222	Premier Audio & Vide
3224	Premier Audio & Vide
301	LAB- AC & DC CON
3062	SFP-10G-SR
3063	SFP-10G-SR
3074	SFP-10G-SR
3075	SFP-10G-SR

Sys No	Description
3080	SFP-10G-SR
3081	SFP-10G-SR
3084	SFP-10G-SR
3085	SFP-10G-SR
3086	SFP-10G-SR
3087	SFP-10G-SR
3088	SFP-10G-SR
3089	SFP-10G-SR
3090	SFP-10G-SR
3091	SFP-10G-SR
3092	SFP-10G-SR
3093	SFP-10G-SR
3094	SFP-10G-SR
3095	SFP-10G-SR
3097	SFP-10G-SR
3098	SFP-10G-SR
3099	SFP-10G-SR
3100	SFP-10G-SR
3101	SFP-10G-SR
3102	SFP-10G-SR
3103	SFP-10G-SR
3104	SFP-10G-SR
3105	SFP-10G-SR
3106	SFP-10G-SR
3107	SFP-10G-SR
3108	SFP-10G-SR
3110	SFP-10G-SR
3111	SFP-10G-SR
3112	SFP-10G-SR
3113	SFP-10G-SR
3114	SFP-10G-SR
3115	SFP-10G-SR
3116	SFP-10G-SR
3117	SFP-10G-SR
3118	SFP-10G-SR
3119	SFP-10G-SR
3120	SFP-10G-SR
3121	SFP-10G-SR
3129	SFP-10G-SR
3130	SFP-10G-SR
3133	SFP-10G-SR
3134	SFP-10G-SR
3135	SFP-10G-SR

Sys No	Description
3136	SFP-10G-SR
3137	SFP-10G-SR
3138	SFP-10G-SR
3139	SFP-10G-SR
3140	SFP-10G-SR
3141	SFP-10G-SR
3142	SFP-10G-SR
3143	SFP-10G-SR
3144	SFP-10G-SR
3146	SFP-10G-SR
3147	SFP-10G-SR
3148	SFP-10G-SR
3149	SFP-10G-SR
3150	SFP-10G-SR
3151	SFP-10G-SR
3152	SFP-10G-SR
3153	SFP-10G-SR
3154	SFP-10G-SR
3155	SFP-10G-SR
3156	SFP-10G-SR
3157	SFP-10G-SR
3159	SFP-10G-SR
3160	SFP-10G-SR
3161	SFP-10G-SR
3162	SFP-10G-SR
3163	SFP-10G-SR
3164	SFP-10G-SR
3165	SFP-10G-SR
3166	SFP-10G-SR
3167	SFP-10G-SR
3168	SFP-10G-SR
3169	SFP-10G-SR
3170	SFP-10G-SR
3182	SFP-10G-SR
3183	SFP-10G-SR
3184	SFP-10G-SR
3185	SFP-10G-SR
3186	SFP-10G-SR
3187	SFP-10G-SR
3188	SFP-10G-SR
3189	SFP-10G-SR
3190	SFP-10G-SR
3191	SFP-10G-SR

Sys No	Description
3205	SFP-10G-SR
3206	SFP-10G-SR
3207	SFP-10G-SR
3208	SFP-10G-SR
3209	SFP-10G-SR
3210	SFP-10G-SR
3211	SFP-10G-SR
3212	SFP-10G-SR
3213	SFP-10G-SR
3214	SFP-10G-SR
701	500 CFM Chamber
730	Q Factor and Eye
754	FPGA ADVANTAGE AQ6140 MULTI WAV
811	
812	AQ8201-418 1X8 OS WAVELENGTH SELE
825	
832	JITTER TX & RX
833	JITTERGENERATOR ADDITIONAL
837	81521B
139	MISC. QUANTITIES
2002	AL-MD001-0700I
2005	AF-MD003-0501I
2021	AL-MD001-0700I
2022	AL-MD001-0700I
2023	AL-MD001-0700I
2024	AL-MD001-0700I
2025	AL-MD001-0700I
2368	AL-MD001-0700A
2369	AL-MD001-0700A
2006	LR-7001
2007	AL-TR-0700I
2008	FR-M04501I
2009	AL-TR-0700I
2010	AL-TR-0700I
2011	AL-TR-0700I
2012	AL-TR-0700I
2013	AL-TR-0700I
2014	LR-7001
2015	LR-7001
2016	LR-7001
329	RELIABILITY

Sys No	Description
	PREDI
1476	MemsPro CS Stand A
1759	10Gbps Module - XFP
1760	10Gbps Module - XFP
1860	Optical Spectrum Ana
1861	Optical Spectrum Ana
1874	Single-mode clock re
1865	Optical Spectrum Ana
1951	Boundary Scan Tools
1952	Boundary Scan Tools
1953	Boundary Scan Tools
1980	Agilent (HP) 86060C/
1982	Agilent/HP 86060C 2
1989	Anritsu MS9710C OS
1991	Anritsu MS9710C OS
2054	10G Tester for 100G
2399	AC100 MSA Module,
2400	AC100 MSA Module,
2426	100G LR4 CFP Gen
2427	100G LR4 CFP Gen
2428	100G LR4 CFP Gen
2429	100G LR4 CFP Gen
2430	100G LR4 CFP Gen
2431	100G LR4 CFP Gen
	PIU, DUAL OSC
2454	FILT
	PIU, DUAL OSC
2455	FILT
2456	PIU, OSC (ES DESIG
2457	PIU, OSC (ES DESIG
	PIU OPTIMA LLM 4
2458	I
	PIU OPTIMA LLM 4
2459	I
	PIU OPTIMA LLM 4
2460	I
2906	Fiberscope
2948	AC100-U0W-07E
2949	AC100-U0W-07E
2950	AC100-U0W-07E
2966	MSA Compliant 100G
2967	MSA Compliant 100G
2968	MSA Compliant 100G
2969	MSA Compliant 100G



Sys No	Description
2970	MSA Compliant 100G
2985	100G Test Sets (333-
2986	100G Test Sets (333-
3008	AC400-001-00H Hot
3009	AC400-001-EVB Eva
3011	Single Fiber Fusion S
3012	Single Fiber Fusion S
3013	Mainframe - EXFO/FT
3016	AC400-001-EVB Eva
3017	AC400-001-EVB Eva
3018	AC400-001-00H Hot
3230	AC400-001-00H Hot
3237	AC400-001-070
3242	AC400-001-070
3243	AC400-001-070
3244	AC400-001-070
3308	333-0104-001 Finisa
3309	333-0104-001 Finisa
3310	333-0104-001 Finisa
3311	333-0104-001 Finisa
3312	333-0104-001 Finisa
3305	329-0020-001 EDFA
3315	170-6001-101 8RU S
3316	170-6001-101 8RU S
3317	170-6001-101 8RU S
3318	170-6001-101 8RU S
3319	170-6001-101 8RU S
3320	170-6001-101 8RU S
3321	170-6001-101 8RU S
3322	160-6001-101 8RU S
3323	160-6001-101 8RU S
3324	160-6001-101 8RU S
3325	160-6001-101 8RU S
3326	160-6001-101 8RU S
3327	160-6021-102 PIU, F
3328	160-6021-102 PIU, F
3329	160-6021-102 PIU, F
3330	160-6021-102 PIU, F
3331	160-6021-102 PIU, F
3332	160-6021-102 PIU, F
3333	160-6021-102 PIU, F
3334	160-6021-102 PIU, F

Sys No	Description
3335	160-6021-102 PIU, F
3336	160-6021-102 PIU, F
3337	160-6021-102 PIU, F
3338	160-6021-102 PIU, F
3339	160-6021-102 PIU, F
3340	160-6021-102 PIU, F
3353	PIU, EDFA TDC MOD
3354	PIU, EDFA TDC MOD
3355	PIU, EDFA TDC MOD
3356	TUNABLE EFEC TXP
3357	TUNABLE EFEC TXP
3358	TUNABLE EFEC TXP
3359	TUNABLE EFEC TXP
3360	TUNABLE EFEC TXP
3361	OC192 TUNABLE EF
3362	OC192 TUNABLE EF TUNABLE TXPIIBP
3363	W
3364	PIU, 10G, MULTIRAT
3365	PIU, 10G, MULTIRAT
3369	PIU, 10G, MULTIRAT
3370	PIU, 10G, MULTIRAT
3371	PIU, 10G, MULTIRAT
3372	PIU, 10G WT TRANS
3373	PIU, 10G WT TRANS
3374	PIU, 10G WT TRANS
3375	PIU, 10G WT TRANS
3376	PIU, 100G MUXPON
3377	PIU, 100G MUXPON
3378	PIU, 100G MUXPON
3379	PIU, 100G MUXPON
3380	PIU, 100G MUXPON
3381	PIU, 100G MUXPON
3382	PIU, 100G MUXPON

Sys No	Description
3383	PIU, 100G MUXPON
3384	PIU, 100G MUXPON
3385	PIU, 100G RZ MUXP
3386	PIU, 100G HIGH PER
3387	PIU, 100G HIGH PER
3388	PIU, 100G HIGH PER
3389	PIU, 100G HIGH PER
3390	PIU, 100G HIGH PER
3391	PIU, 100G HIGH PER
3392	PIU, 100G HIGH PER 100G OIF
3399	COMPLIAN
3400	MSA, OPTICAL TRA
3401	MSA, OPTICAL TRA
3402	MSA, OPTICAL TRA
3403	MSA, OPTICAL TRA
3428	PIU, DUAL OSC FILT
3429	PIU, DUAL OSC FILT
3430	PIU, EDFA OPTICAL
3431	PIU, EDFA OPTICAL
3432	PIU, EDFA OPTICAL
3433	PIU, EDFA OPTICAL
3434	PIU, EDFA OPTICAL
3435	PIU, EDFA OPTICAL
3436	PIU, EDFA OPTICAL
3437	PIU, EDFA OPTICAL
3438	PIU, EDFA OPTICAL
3439	PIU, EDFA OPTICAL
3440	PIU, EDFA OPTICAL
3441	PIU, EDFA OPTICAL
3442	PIU, EDFA OPTICAL
3443	PIU, EDFA OPTICAL
3444	PIU, EDFA OPTICAL
3445	PIU, EDFA OPTICAL
3446	PIU, EDFA OPTICAL
3447	PIU, EDFA OPTICAL
3448	PIU, EDFA OPTICAL
3449	PIU, EDFA OPTICAL
3450	PIU, EDFA OPTICAL
3451	PIU, EDFA OPTICAL
3452	PIU, EDFA OPTICAL
3453	PIU, EDFA OPTICAL

Sys No	Description
3454	PIU, EDFA OPTICAL
3455	PIU, EDFA OPTICAL
3456	PIU, EDFA OPTICAL
3457	PIU, EDFA OPTICAL
3458	PIU, EDFA OPTICAL
3459	PIU, EDFA OPTICAL
3460	PIU, EDFA OPTICAL
3461	PIU, EDFA OPTICAL
3462	PIU, EDFA OPTICAL
3463	PIU, EDFA OPTICAL
3464	PIU, EDFA OPTICAL
3465	PIU, EDFA OPTICAL
3466	PIU, EDFA OPTICAL
3467	PIU, EDFA OPTICAL
3488	PIU, DUAL 50/50 CO
3489	PIU, DUAL 50/50 CO
3494	RMM, OPSM-CS
3495	MDM48 C-BAND OD
3496	SFP, 1510NM +/-6.5N
3497	SFP, 1510NM +/-6.5N
3498	PIU, NU-WAVE OPTI
3501	RMM, AMPLIFIER SH
3502	PIU, OSC (ES DESIG
3503	PIU, OSC (ES DESIG
3504	PIU, OSC (ES DESIG
3505	AMPLIFICATION MO
3506	AMPLIFICATION MO
3507	PIU, GFF150-2S24 +
3508	PIU, GFF150-2S24 +
3509	PIU, GFF150-2S24 +
3510	PIU, GFF150-2S24 +
3511	170-5206-001RMM, F
3512	170-5206-001RMM, F
3513	PIU, NU-WAVE DUA
3514	PIU, NU-WAVE DUA
3515	PIU, NU-WAVE DUA
3516	PIU, NU-WAVE DUA
3517	PIU, NU-WAVE DUA
3518	PIU, NU-WAVE DUA
3519	PIU, NU-WAVE DUA

Sys No	Description
3520	PIU, NU-WAVE DUA
3521	PIU, NU-WAVE DUA
3522	PIU, NU-WAVE DUA
3523	PIU, NU-WAVE DUA
3524	PIU, NU-WAVE DUA
3525	PIU, NU-WAVE DUA
3526	PIU, NU-WAVE DUA
3527	PIU, NU-WAVE DUA
3528	PIU, NU-WAVE DUA
3529	PIU, NU-WAVE DUA
3530	PIU, NU-WAVE DUA
3531	PIU, NU-WAVE DUA
3532	PIU, NU-WAVE DUA
3533	PIU, NU-WAVE DUA
3534	PIU, NU-WAVE DUA
3535	PIU, NU-WAVE DUA
3536	PIU, NU-WAVE DUA
3537	PIU, NU-WAVE DUA
3538	PIU, NU-WAVE DUA
3539	PIU, NU-WAVE DUA
3540	PIU, NU-WAVE DUA
3541	UNIVERSAL MUXPO
3542	UNIVERSAL MUXPO
3543	UNIVERSAL MUXPO
3544	UNIVERSAL MUXPO
3545	UNIVERSAL MUXPO
3546	UNIVERSAL MUXPO
3547	UNIVERSAL MUXPO
3548	UNIVERSAL MUXPO
3549	UNIVERSAL MUXPO
3550	UNIVERSAL MUXPO
3551	UNIVERSAL MUXPO
3552	UNIVERSAL MUXPO
3553	UNIVERSAL MUXPO

Sys No	Description
3554	UNIVERSAL MUXPO
3555	UNIVERSAL MUXPO
3556	UNIVERSAL MUXPO
3557	UNIVERSAL MUXPO
3558	UNIVERSAL MUXPO
3559	UNIVERSAL MUXPO
3568	RMM, FSU-I (170-52
3569	RMM, FSU-I (170-52
3570	RMM, FSU-I (170-52
3571	RMM, FSU-I (170-52
3572	RMM, FSU-I (170-52
3590	PIU, 8RU ALARMS (1
3591	PIU, 8RU ALARMS (1
3592	PIU, 8RU ALARMS (1
3593	SFP, SR OC-48 (STM
3594	SFP, SR OC-48 (STM
3595	SFP, SR OC-48 (STM
3596	SFP, SR OC-48 (STM
3597	SFP, SR OC-48 (STM
3605	XFP 1310 NM TRAN
3606	XFP 1310 NM TRAN
3607	XFP 1310 NM TRAN
3608	XFP 1310 NM TRAN
3609	XFP 1310 NM TRAN
3610	XFP 1310 NM TRAN
3611	XFP 1310 NM TRAN
3612	XFP 1310 NM TRAN
3613	XFP 1310 NM TRAN
3614	XFP 1310 NM TRAN
3615	XFP 1310 NM TRAN
3616	XFP 1310 NM TRAN
3617	XFP 1310 NM TRAN
3618	XFP 1310 NM TRAN
3619	XFP 1310 NM TRAN
3620	XFP 1310 NM TRAN
3621	XFP 1310 NM TRAN

Sys No	Description
3622	XFP 1310 NM TRAN
3623	XFP 1310 NM TRAN
3624	XFP 1310 NM TRAN
3625	XFP 1310 NM TRAN
3626	XFP 1310 NM TRAN
3627	XFP 1310 NM TRAN
3628	XFP 1310 NM TRAN
3629	XFP 1310 NM TRAN
3630	XFP 1310 NM TRAN
3631	XFP 1310 NM TRAN
3632	XFP 1310 NM TRAN
3633	XFP 1310 NM TRAN
3634	XFP 1310 NM TRAN
3635	XFP 1310 NM TRAN
3636	XFP 1310 NM TRAN
3637	XFP 1310 NM TRAN
3638	XFP 1310 NM TRAN
3639	XFP 1310 NM TRAN
3640	XFP 1310 NM TRAN
3641	XFP 1310 NM TRAN
3642	XFP 1310 NM TRAN
3643	XFP 1310 NM TRAN
3644	XFP 1310 NM TRAN
3645	XFP 1310 NM TRAN
3646	XFP 1310 NM TRAN
3647	XFP 1310 NM TRAN
3648	XFP 1310 NM TRAN
3649	XFP 1310 NM TRAN
3650	RMM, AMPLIFIER SH
3651	RMM, AMPLIFIER SH
3652	RMM, AMPLIFIER SH
3653	RMM, AMPLIFIER SH
3654	RMM, OCHM, SINGL RACK MOUNTED SH
234	FIBER
339	POLARIZATIO AQ6317B OPTICAL
934	S
937	8000 MODULAR CO

Sys No	Description
939	80C02 OPTICAL MO
940	SMR20 SIG GENERE
996	AQ6317B - OPTICA AQ6317B OPTICAL
1094	S
1567	DELL PROJECTOR
1625	80C08C; OPTICAL S
1986	Emulator for Manf Te PIU, EDFA Optical
2908	Am
2893	FIP-400-P-DUAL-DE
2894	FIP-400-USB2
2895	FIPT-400-U25MA
2896	FIPT-400-U12M
2897	FIPT-400-U12MA
2898	RAC-SC-LC (UPC)
2999	8RU SHELF CONTR
3254	10GIGE
3255	2.5G-BUNDLE
3256	FIP-400B
3261	IQS-610P-HS
3262	IQS-88100NGE-100G
3268	10GIGE
3269	2.5G-BUNDLE
3270	FIP-400B
3271	FIP-400B
3277	IQS-88100NGE-100G
3281	Finisar FTLC8221SC
3282	Finisar FTLC8221SC
3283	Finisar FTLC8221SC
3284	Finisar FTLC8221SC
3295	ML4030 MSA Compli
3296	ML4029 MSA Compli
3297	ML4030 MSA Compli
3298	ML4030 MSA Compli
3299	ML4030 MSA Compli
3280	170-7002-201 RMM,
3306	333-0104-001 Finisa
3307	Finisar FTLC8221SC
3344	Printer Label W AC A
3345	Printer Label W AC A
3346	Printer Label W AC A
3347	Printer Label W AC A

Sys No	Description
3348	Printer Label W AC A
3349	Printer Label W AC A
3350	Printer Label W AC A
3487	PDU ASSEMBLY KIT
3657	SHELF, TRANSPOR
3015	333-0006-003 -30
3263	Finisar Loaner Purch
3278	PL-ETH2-BLASTER
3301	SHELF FAN 4RU EX
3302	EXPANSION SHELF ALARM CARRIER
3303	AS
3304	Finisar FTLC8221SC

**Section 2.1(a)(v) – Transferred Patents**

All US patents owned exclusively by Seller or any of the Seller Affiliates or jointly owned by Seller or any of the Seller Affiliates and the University of Michigan, including, without limitation, the following:

<b>PatentNum</b>	<b>IssueDate</b>	<b>Inventors</b>	<b>Title</b>	<b>Status</b>
5,778,014	7/7/1998	Mohammed N. ISLAM	SAGNAC RAMAN AMPLIFIERS AND CASCADE LASERS	Xtera US
6,532,101	3/11/2003	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	SYSTEM AND METHOD FOR WIDE BAND RAMAN AMPLIFICATION	Xtera US
6,567,430	5/20/2003	Mohammed N. ISLAM, Michael J. Freeman, Hayden H. HARRIS	RAMAN OSCILLATOR INCLUDING AN INTRACAVITY FILTER AND AMPLIFIERS UTILIZING SAME	Xtera US
6,574,037	6/3/2003	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	ALL BAND AMPLIFIER	Xtera US
6,587,259	7/1/2003	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	SYSTEM AND METHOD FOR CONTROLLING NOISE FIGURE	Xtera US
6,594,071	7/15/2003	Pavle Gavrilovic, Peter J. Goudreau, James E. Newby IV, Ricardo E. Saad	METHOD AND APPARATUS FOR AMPLIFIER CONTROL	Xtera US
6,600,592	7/29/2003	Mohammed N. ISLAM	S+ BAND NONLINEAR POLARIZATION AMPLIFIERS	Xtera US
6,618,192	9/9/2003	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	HIGH EFFICIENCY RAMAN AMPLIFIER	Xtera US
6,631,025	10/7/2003	Mohammed N. ISLAM, Michael J. Freeman	LOW-NOISE DISTRIBUTED RAMAN AMPLIFIER USING BI-DIRECTIONAL PUMPING USING MULTIPLE RAMAN ORDERS	Xtera US

PatentNum	IssueDate	Inventors	Title	Status
6,631,028	10/7/2003	Mohammed N. ISLAM	BROADBAND AMPLIFIER AND COMMUNICATION SYSTEM	Xtera US
6,646,788	11/11/2003	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	SYSTEM AND METHOD FOR WIDE BAND RAMAN AMPLIFICATION	Xtera US
6,693,737	2/17/2004	Mohammed N. ISLAM	DISPERSION COMPENSATING NONLINEAR POLARIZATION AMPLIFIERS	Xtera US
6,714,342	3/30/2004	Mohammed N. ISLAM, Michael J. Freeman	LOW-NOISE DISTRIBUTED RAMAN AMPLIFIER USING BI-DIRECTIONAL PUMPING USING MULTIPLE RAMAN ORDERS	Xtera US
6,744,553	6/1/2004	Mohammed N. ISLAM, Ozdal Boyraz, Carl A. DeWilde	SYSTEM AND METHOD FOR CONVERTING A PLURALITY OF WAVELENGTHS	Xtera US
6,751,371	6/15/2004	Herve A. Fevrier, Paul D. Pantages, Michel W. Chbat, Anand K. Gonuguntla, Zhi Feng	METHOD AND APPARATUS FOR OPTICAL ELEMENT MANAGEMENT	Xtera US
6,760,148	7/6/2004	Mohammed N. ISLAM	NONLINEAR POLARIZATION AMPLIFIERS IN NONZERO DISPERSION SHIFTED FIBER	Xtera US
6,778,321	8/17/2004	Mohammed N. ISLAM	FIBER OPTIC TRANSMISSION SYSTEM FOR A METROPOLITAN AREA NETWORK	Xtera US
6,810,214	10/26/2004	Michel W. Chbat, Herve A. Fevrier, Pavle Gavrilovic, Hyunchin Kim, Andrej B. Puc	METHOD AND SYSTEM FOR REDUCING DEGRADATION OF OPTICAL SIGNAL TO NOISE RATIO	Xtera US

PatentNum	IssueDate	Inventors	Title	Status
6,819,478	11/16/2004	Mohammed N. ISLAM	FIBER OPTIC TRANSMISSION SYSTEM WITH LOW COST TRANSMITTER COMPENSATION	Xtera US
6,819,479	11/16/2004	Mohammed N. ISLAM, Michael J. Freeman, Pavle Gavrilovic, Andrzej S. Kaminski	OPTICAL AMPLIFICATION USING LAUNCHED SIGNAL POWERS SELECTED AS A FUNCTION OF A NOISE FIGURE	Xtera US
6,825,973	11/30/2004	Andrej B. Puc, Michel W. Chbat, Jason D. Henrie, Sergey P. Burtsev, Frederic L. Barthelemy, Ned A. Weaver	REDUCING LEADING EDGE TRANSIENTS USING CO-PROPAGATING PUMPS	Xtera US
6,876,489	4/5/2005	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	ALL BAND AMPLIFIER	Xtera US
6,919,986	7/19/2005	Mohammed N. ISLAM	NONLINEAR POLARIZATION AMPLIFIERS IN NONZERO DISPERSION SHIFTED FIBER	Xtera US
6,924,926	8/2/2005	Mohammed N. ISLAM, Michael J. Freeman	LASER DIODE PUMP SOURCES	Jointly owned with U of M
6,943,936	9/13/2005	Mohammed N. ISLAM, Michael J. Freeman	CO-PROPAGATING RAMAN AMPLIFIERS	Jointly owned with U of M
6,985,283	1/10/2006	Mohammed N. ISLAM, Mohammed A. Islam, Michael R. Slawson	FIBER-OPTIC COMPENSATION FOR DISPERSION, GAIN TILT, AND BAND PUMP NONLINEARITY	Jointly owned with U of M
7,058,311	6/6/2006	Mohammed N. ISLAM, Amos Kuditcher	SYSTEM AND METHOD FOR DISPERSION COMPENSATION IN AN OPTICAL COMMUNICATION SYSTEM	Xtera US

<b>PatentNum</b>	<b>IssueDate</b>	<b>Inventors</b>	<b>Title</b>	<b>Status</b>
7,068,938	6/27/2006	Mohammed N. ISLAM, Andrzej S. Kaminski, Herve A. Fevrier, Carl A. DeWilde, Ozdal Boyraz	BAND OPTICAL ADD/DROP MULTIPLEXING	Xtera US
7,197,245	3/27/2007	Mohammed N. ISLAM, Carl A. DeWilde	SYSTEM AND METHOD FOR MANAGING SYSTEM MARGIN	Xtera US
7,233,432	6/19/2007	Mohammed N. ISLAM, Michael J. Freeman, Amos Kuditcher	PRE-EMPHASIZED OPTICAL COMMUNICATION	Xtera US
7,254,337	8/7/2007	Mohammed N. ISLAM, Andrzej S. Kaminski, Herve A. Fevrier, Carl A. DeWilde, Ozdal Boyraz	BAND OPTICAL ADD/DROP MULTIPLEXING	Xtera US
7,254,341	8/7/2007	Mohammed N. ISLAM, Amos Kuditcher	SYSTEM AND METHOD FOR DISPERSION COMPENSATION IN AN OPTICAL COMMUNICATION SYSTEM	Xtera US
7,336,869	2/26/2008	Philippe A. Perrier, Sergey P. Burtsev, Do Il Chang, Andrzej S. Kaminski, Andrej B. Puc	SYSTEM AND METHOD FOR IMPLEMENTING A HIGH CAPACITY UNREPEATERED OPTICAL COMMUNICATION SYSTEM	Xtera US
7,379,223	5/27/2008	Stephen M Webb, Richard Oberland	MODULATOR CONTROL SYSTEM	Xtera UK
7,515,331	4/7/2009	Alan Olway	TWIN OPTICAL AMPLIFIER WITH DUAL PUMP POWER CONTROL	Xtera UK
7,526,205	4/28/2009	Martin Chown, Stuart Barnes, Stephen M Webb, David C. Winterburn	TRANSMISSION SYSTEM	Xtera UK

PatentNum	IssueDate	Inventors	Title	Status
7,567,593	7/28/2009	Herve A. Fevrier, Andrej B. Puc, Do Il Chang, Andrzej S. Kaminski	SYSTEM AND METHOD FOR FRACTIONAL RAMAN ORDER PUMPING IN OPTICAL COMMUNICATION SYSTEMS	Xtera US
7,665,909	2/23/2010	Philippe A. Perrier, Sergey P. Burtsev, Do Il Chang, Andrzej S. Kaminski, Andrej B. Puc	SYSTEM AND METHOD FOR IMPLEMENTING A HIGH CAPACITY UNREPEATERED OPTICAL COMMUNICATION SYSTEM	Xtera US
7,684,711	3/23/2010	Steve Desbruslais, John G. ELLISON, David Gordon Powell	PULSED HIGH LOSS LOOP BACK SIGNALLING SCHEME	Xtera UK
7,742,223	6/22/2010	Andrej B. Puc	SYSTEM AND METHOD FOR IMPLEMENTING A BOOSTERLESS OPTICAL COMMUNICATION SYSTEM	Xtera US
7,822,348	10/26/2010	Stephen Michael Webb, Richard Oberland	ADAPTIVE PULSE SHAPE CONTROL	Xtera UK
7,860,403	12/28/2010	Sergei Turitsyn, Mickail Fedoruk, Elena G. Shapiro	DATA FORMAT FOR HIGH BIT RATE WDM TRANSMISSION	Xtera US
7,869,673	1/11/2011	Do-Il Chang, Andrej B. Puc	REMOTE LARGER EFFECTIVE AREA OPTICAL FIBER	Xtera US
7,885,550	2/8/2011	Richard Oberland	METHOD AND APPARATUS FOR PRODUCING RZ- DPSK MODULATED OPTICAL SIGNALS	Xtera UK
7,974,002	7/5/2011	Mohammed N. ISLAM, Carl A. DeWilde	SYSTEM AND METHOD FOR MANAGING SYSTEM MARGIN	Xtera US
7,978,973	7/12/2011	Martin Chown, Stuart Barnes, Stephen M Webb, David C.	TRANSMISSION SYSTEM	Xtera UK



PatentNum	IssueDate	Inventors	Title	Status
		Winterburn		
7,995,929	8/9/2011	Stephen Michael Webb, Stephen Desbrulais	OPTICAL RECEIVER AND AN OPTICAL TRANSMISSION SYSTEM INCORPORATING THE SAME	Xtera UK
8,111,453	2/7/2012	Wayne S. Pelouch, Do-Il Chang	SUBMARINE OPTICAL REPEATER	Xtera US
8,111,454	2/7/2012	Do-Il Chang, Wayne S. Pelouch	OPTICAL COMMUNICATION USING SHARED OPTICAL PUMPS	Xtera US
8,145,062	3/27/2012	Wayne S. Pelouch, Do-Il Chang, Herve A. Fevrier	OPTICAL AMPLIFIER CAPABLE OF AMPLIFYING OPTICAL SIGNALS THAT TRAVERSE SEPARATE TRANSMISSION FIBERS	Xtera US
8,228,598	7/24/2012	Do-Il Chang, Wayne S. Pelouch, Herve A. Fevrier	OPTICAL AMPLIFIER WITH RAMAN AND RARE-EARTH-DOPED FIBER AMPLIFIER BOTH PUMPED EFFICIENTLY USING DIRECT AND REFLECTED PUMP LIGHT	Xtera US
8,233,216	7/31/2012	Do-Il Chang, Wayne S. Pelouch, Herve A. Fevrier	OPTICAL AMPLIFIER BANDWIDTH ALTERATION	Xtera US
8,351,798	1/8/2013	Sumudu Geethika Edirisinghe, Jorg Erich Schwartz, Wai Mun Wong	PHASE SHIFT KEYED HIGH SPEED SIGNALING	Xtera UK
8,355,128	1/15/2013	Stephen Michael Webb, John G. ELLISON	POLARIZATION CONTROLLER	Xtera US
8,380,064	2/19/2013	Stephen DESBRUSLAIS, Richard Oberland, Stuart Barnes, Stephen Michael Webb	DEPOLARISED WDM SOURCE	Xtera US

PatentNum	IssueDate	Inventors	Title	Status
8,380,068	2/19/2013	Do-Il Chang, Wayne S. Pelouch	DISTINCT DISPERSION COMPENSATION FOR COHERENT CHANNELS	Xtera US
8,380,069	2/19/2013	Wayne S. Pelouch, Do-Il Chang	INTRODUCTION- SIDE DISPERSION SHIFTING OF CHANNELS	Xtera US
8,380,071	2/19/2013	Steven M. Webb, Gerhard W. Van Lochem	Repeater Surge Coil and Diode Chain Design	Xtera UK
8,406,637	3/26/2013	Stephen Michael Webb, David Winterburn, Stephen Debruslais	Automatic Pre-Emphasis	Xtera UK
8,442,405	5/14/2013	John G. Ellison, Stephen Michael Webb, David C. Winterburn, Stephen Desbruslais	Mulpi-Stage Polarization Mode dispersion Compensation	Xtera US
8,718,476	5/6/2014	Steven Webb, David Winterburn	Tunable Optical Discriminator	Xtera UK
8,971,171	3/3/2015	Stuart Barnes, Martin Chown, Stephen M. Webb, David C. Winterburn	Reduced FEC Overhead in an Optical Transmission System	Xtera UK
9,094,127	7/28/2015	Kevin Willoughby, John Durban, Adam Arnold	Optical Repeater Amplifier Insertion and Removal Technology	Xtera US
9,094,147	7/28/2015	Gerhard Willem Van Lochem, Stephen Desbruslais, David Winterburn	System Control of Repeatered Optical Communications System	Xtera US
9,184,848	11/10/2015	Kevin Willoughby, John Durban, Adam Arnold	Optical Repeater Amplifier Insertion and Removal Technology	Xtera US
9,398,354	7/19/2016	James A. Hess	Integrated Assembly for Switching Optical Systems	Xtera US
9,461,437	10/4/2016	Do-Il Chang, Wayne S. Pelouch, Stephen M. Webb	Tilt Control Through Optical Pump Power Adjustment	Xtera US

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PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
2,002,574	8/8/2012	Stephen Desbruslais, Richard Oberland, Stuart Barnes, Stephen M Webb	A Depolarised WDM Source	UK	Xtera Communications Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	YES	US8380064
60 2007 024 551.6	8/8/2012	Stephen Desbruslais, Richard Oberland, Stuart Barnes, Stephen M Webb	A Depolarised WDM Source	Germany	Xtera Communications Ltd., Romford, Essex, GB	YES	US8380064
2,002,574	8/8/2012	Stephen Desbruslais, Richard Oberland, Stuart Barnes, Stephen M Webb	A Depolarised WDM Source	France	XTERA COMMUNICATIONS LIMITED - BATES HOUSE CHURCH ROAD HAROLD WOOD - ROMFORD, ESSEX RM3 0SD	YES	US8380064
60 2004 040 620.1	1/2/2013	Stephen M Webb, Richard Oberland	A Modulator Control System	Germany	Xtera Communications Ltd., Romford, Essex, GB	YES	US7379223
1,597,624	1/2/2013	Stephen M Webb, Richard Oberland	A Modulator Control System	France	XTERA COMMUNICATIONS LTD. - BATES HOUSE 151 CHURCH ROAD - HAROLD	YES	US7379223

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
					WOOD ROMFORD ESSEX RM3 0SD		
1,597,624	1/2/2013	Stephen M Webb, Richard Oberland	A Modulator Control System	Europe	XTERA COMMUNIC ATIONS LTD. - BATES HOUSE 151 CHURCH ROAD - HAROLD WOOD ROMFORD ESSEX RM3 0SD	<b>Grante d and convert ed</b>	US7379223
2,451,535	11/30/2011	Stephen Desbruslais, Richard Oberland, John Ellison, Stephen M Webb	An Optical Filter	UK	Xtera Communicatio ns Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	<b>YES</b>	U.S. Patent did not issue as U.S. application was abandoned. Published as US2009/002 8555
2185968 (E)	6/4/2014	Stephen Desbruslais, Richard Oberland, John Ellison, Stephen M Webb	An Optical Filter	France	Xtera Communicatio ns Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	<b>YES</b>	U.S. Patent did not issue as U.S. application was abandoned. Published as US2009/002 8555

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
2,185,968	6/4/2014	Stephen Desbruslais, Richard Oberland, John Ellison, Stephen M Webb	An Optical Filter	Europe	Xtera Communications Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	<b>Granted and converted</b>	U.S. Patent did not issue as U.S. application was abandoned. Published as US2009/0028555
60 2005 016 938.5	9/30/2009	Stephen M Webb, Stephen Desbruslais	An Optical Receiver and an Optical Transmission System Incorporating the Same	Germany	Xtera Communications Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	<b>YES</b>	US7995929
1,776,787	8/9/2005	Stephen M Webb, Stephen Desbruslais	An Optical Receiver and an Optical Transmission System Incorporating the Same	France	Xtera Communications Ltd Bates House 151 Church Road Harold Wood Romford Essex RM3 0SD United Kingdom	<b>YES</b>	US7995929
2,297,888	1/6/2016	Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Automatic Pre-Emphasis	Europe	Xtera Communications Ltd	<b>Granted and converted</b>	US8406637
60 2009 035 624.0	06/Jan/16	Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Automatic Pre-Emphasis	Germany	Xtera Communications Ltd	<b>Yes</b>	US8406637
2,297,888	06/Jan/16	Stephen M Webb, David	Automatic Pre-	France	Xtera Communicatio	<b>Yes</b>	US8406637

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
		C. Winterburn, Stephen Desbruslais	Emphasis		ns Ltd		
2,297,888	06/Jan/ 16	Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Automatic Pre- Emphasis	UK	Xtera Communicatio ns Ltd	<b>Yes</b>	US8406637
5,421,360	11/29/2 013	Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Automatic Pre- Emphasis	Japan	Xtera Communicatio ns Ltd	<b>YES</b>	US8406637
4,746,126	5/20/20 11	Stephen Desbruslais, Richard Oberland, Stuart Barnes, Stephen M Webb	Depolarisin g a WDM signal by passing it through a differential group delay element	Japan	Xtera Communicatio ns LtdBates House151 Church RoadHarold WoodRomford Essex RM3 OSDUnited Kingdom	<b>YES</b>	US8380064
4,746,126	5/20/20 11	Stephen Desbr uslais, Richard Oberland, Stuart Barnes, Stephen M Webb	Depolarisin g a WDM signal by passing it through a differential group delay element	Japan	Xtera Communicatio ns Ltd	<b>YES</b>	US8380064
699 42 932.3	11/10/2 010	Mohammed N. Islam, Mohammed A. Islam, Michael R. Slawson	Dispersion Compensat ing and Amplifying Optical Element	German y	Xtera Communicatio ns, Inc., Allen, Tex., US; The Regents of the University of Michigan, Ann Arbor, Mich., US	<b>YES</b>	Jointly Owned with U of M (US6985283 ) US also
1,088,375	11/10/2 010	Mohammed N. Islam, Mohammed A. Islam, Michael R. Slawson	Dispersion Compensat ing and Amplifying Optical Element	France (Regent s - Univ of Mich)	XTERA COMMUNIC ATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 -	<b>YES</b>	Jointly Owned with U of M (US6985283 ) US also

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
					US; THE REGENTS OF THE UNIVERSITY OF MICHIGAN - 3003 S. STATE STREET, - ANN ARBOR, MI 48109- 8202 - US		
1,088,375	11/10/2010	Mohammed N. Islam, Mohammed A. Islam, Michael R. Slawson	Dispersion Compensating and Amplifying Optical Element	Europe (Xtera & UoM)	Xtera Communications, Inc., Allen, Tex., US + Regents of UoM	<b>Granted and converted</b>	Jointly Owned with U of M (US6985283) US also
5,069,825	6/16/1999	Mohammed N. Islam, Mohammed A. Islam, Michael R. Slawson	Dispersion Compensating and Amplifying Optical Element	Japan	Xtera Communications, Inc., Allen, Tex., US; The Regents of the University of Michigan, Ann Arbor, Mich., US	<b>YES</b>	Jointly Owned with U of M (US6985283) US also
1,749,357	4/22/2009	Richard Oberland	Method and Apparatus for Producing High Extinction Ratio Data Modulation Formats	Germany	Xtera Communications Ltd., Romford, Essex, GB	<b>YES</b>	U.S. Patent did not issue as U.S. application was abandoned. Published as US2007/0280701
1,749,357	4/22/2009	Richard Oberland	Method and Apparatus for Producing High Extinction Ratio Data Modulation Formats	France	XTERA COMMUNICATIONS LTD. - DEVONSHIRE HOUSE 60 GOSWELL ROAD - EC1M 7AD LONDON -	<b>YES</b>	U.S. Patent did not issue as U.S. application was abandoned. Published as US2007/0280701

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
4,477,643	5/19/2010	Richard Oberland	Method and Appartus for Producing RZ-DPSK Modulated Optical Signals	Japan	Xtera Communicatio ns Ltd.	Yes	US7885550
60 2004 009 469.2	10/10/2007	Richard Oberland	Method and Appartus for Producing RZ-DPSK Modulated Optical Signals	Germany	Xtera Communicatio ns Ltd., Romford, Essex, GB	YES	US7885550
1,690,349	10/10/2007	Richard Oberland	Method and Appartus for Producing RZ-DPSK Modulated Optical Signals	France	XTERA COMMUNIC ATIONS LTD. - DEVONSHIRE HOUSE 60 GOSWELL ROAD - EC1M 7AD LONDON -	YES	US7885550
4,477,643	3/19/2010	Richard Oberland	Method and Appartus for Producing RZ-DPSK Modulated Optical Signals	Japan	Xtera Communicatio ns Ltd.	YES	US7885550
2,641,344	6/17/2015	John Ellison, Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Multi-Stage Polarizatio n Mode Dispersion Compensat ion	Europe	Xtera Communicatio ns, Inc., Allen, Tex., US	YES (FR,UK )	US8442405
2,641,344	6/17/2015	John Ellison, Stephen M Webb, David C. Winterburn,	Multi-Stage Polarizatio n Mode	UK	Xtera Communicatio ns, Inc., Allen, Tex., US	YES	US8442405



PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
		Stephen Desbruslais	Dispersion Compensation				
2,641,344	6/17/2015	John Ellison, Stephen M Webb, David C. Winterburn, Stephen Desbruslais	Multi-Stage Polarization Mode Dispersion Compensation	France	Xtera Communications, Inc., Allen, Tex., US	<b>YES</b>	US8442405
60 2005 025 117.0	12/1/2010	Stephen Desbruslais, John Ellison, David Powell	Pulsed High Loss Loop Back Signalling Scheme	Germany	Xtera Communications Ltd., Romford, Essex, GB	<b>YES</b>	US7684711
1,756,979	12/1/2010	Stephen Desbruslais, John Ellison, David Powell	Pulsed High Loss Loop Back Signalling Scheme	France	XTERA COMMUNICATIONS LTD. - BATES HOUSE 151 CHURCH ROAD - HAROLD WOOD ROMFORD ESSEX RM3 0SD - GB	<b>YES</b>	US7684711
601 39 923.4	9/16/2009	Mohammed N. Islam, Michael J. Freeman	Raman Amplifier With Bi-Directional Pumping	Germany	Xtera Communications, Inc., Allen, Tex., US	<b>YES</b>	US 6631025, 6714342
1,250,737	9/16/2009	Mohammed N. Islam, Michael J. Freeman	Raman Amplifier With Bi-Directional Pumping	France	XTERA COMMUNICATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 - US	<b>YES</b>	US 6631025, 6714342
1,250,737	9/16/2009	Mohammed N. Islam, Michael Freeman	Raman Amplifier with Bi-Directional Pumping	Europe	Xtera Communications, Inc.	<b>Yes (FR,DE)</b>	US 6631025, 6714342
60 2006 021 604.1	4/27/2011	Stephen M Webb, Gerhard	Repeater Surge Coil	Germany	Xtera Communicatio	<b>YES</b>	US8380071

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
		W. Van Lochem	and Diode Chain Design		ns Ltd., London, GB		
1,949,568	4/27/2011	Stephen M Webb, Gerhard W. Van Lochem	Repeater Surge Coil and Diode Chain Design	France	AZEA NETWORKS LIMITED - BATES HOUSE, 151 CHURCH ROAD, HAROLD WOOD - ROMFORD, ESSEX RM3 0SD - GB	<b>YES</b>	US8380071
1,585,997	7/23/2015	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	System and Method For Controlling Noise Figure	Europe	Xtera Communications, Inc.	<b>Granted and converted</b>	US6587259
1,585,997	7/23/2015	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	System and Method For Controlling Noise Figure	France	XTERA COMMUNICATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 - US	<b>YES</b>	US6587259
602 47 408.6	7/23/2015	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	System and Method For Controlling Noise Figure	Germany	XTERA COMMUNICATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 - US	<b>YES</b>	US6587259
1,585,997	7/23/2015	Mohammed N. ISLAM, Carl A. DeWilde, Michael J. Freeman	System and Method For Controlling Noise Figure	UK	XTERA COMMUNICATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 - US	<b>YES</b>	US6587259

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
4,938,839	3/2/2012	Andrej B. Puc	System and Method for Implementing a Boosterless Optical Communication System	Japan	Xtera Communications, Inc.	<b>YES</b>	US7742223
1368869	8/3/2011	Mohammed N. Islam, Michael J. Freeman, Carl A. DeWilde	System and Method for Wide Band Raman Amplification	Europe	Xtera Communications, Inc.	<b>Granted and converted</b>	US6532101, 6646788
602 40 685.4	8/3/2011	Mohammed N. Islam, Michael J. Freeman, Carl A. DeWilde	System and Method for Wide Band Raman Amplification	Germany	Xtera Communications, Inc., Allen, Tex., US	<b>YES</b>	US6532101, 6646788
1368869	8/3/2011	Mohammed N. Islam, Michael J. Freeman, Carl A. DeWilde	System and Method for Wide Band Raman Amplification	France	XTERA COMMUNICATIONS, INC. - 500 WEST BETHANY DRIVE - ALLEN, TX 75013-0030 - US	<b>YES</b>	US6532101, 6646788
603 02 881.0	12/12/2005	Stuart Barnes, Martin Chown, Stephen M. Webb	Transmission System	Germany	Azea Networks Ltd., Romford, Essex, GB	<b>YES</b>	US8971171, 7526205, 7978973
1,495,607	12/12/2005	Stuart Barnes, Martin Chown, Stephen M. Webb	Transmission System	France	Azea Networks Limited - -	<b>YES</b>	US8971171, 7526205, 7978973
1,495,568	3/15/2006	Stuart Barnes, Martin Chown, Stephen M. Webb, David C. Winterburn	Transmission System	France	Azea Networks Limited - -	<b>YES</b>	US8971171, 7526205, 7978973
1,495,568	3/15/2006	Stuart Barnes, Martin Chown, Stephen M. Webb, David C. Winterburn	Transmission System	Europe	Azea Networks Limited	<b>Granted and converted</b>	US8971171, 7526205, 7978973

PatentNum	Issue Date	Inventors	Title	Country	Applicant	STATUS	COMMENT
5,438,838	12/20/2013	Do-II Chang, Wayne S. Pelouch	Introduction-Side Dispersion Shifting of Channels	Japan	Xtera Communications, Inc., Allen, Tex., US	<b>YES</b>	US8380068, 8380069
2 013 648	6/29/2016	Do-II Chang, Philippe Perrier, Andrej B. Puc, Andrej S. Kaminski, Sergey Burtsev	System and Method for Implementing a High Capacity Unrepeatered Optical Communication System	Europe	Xtera Communications Inc.	<b>Granted and converted</b>	US7336869, 7665909
2 013 648	6/29/2016	Do-II Chang, Philippe Perrier, Andrej B. Puc, Andrej S. Kaminski, Sergey Burtsev	System and Method for Implementing a High Capacity Unrepeatered Optical Communication System	France	Xtera Communications Inc.	<b>Granted and converted</b>	US7336869, 7665909
2 013 648	6/29/2016	Do-II Chang, Philippe Perrier, Andrej B. Puc, Andrej S. Kaminski, Sergey Burtsev	System and Method for Implementing a High Capacity Unrepeatered Optical Communication System	UK	Xtera Communications Inc.	<b>Granted and converted</b>	US7336869, 7665909
602.20.07046805.1	6/29/2016	Do-II Chang, Philippe Perrier, Andrej B. Puc, Andrej S. Kaminski, Sergey Burtsev	System and Method for Implementing a High Capacity Unrepeatered Optical Communication System	Germany	Xtera Communications Inc.	<b>Granted and converted</b>	US7336869, 7665909

All US patent applications filed by Seller or any of the Seller Affiliates, including, without limitation, the following:

<b>Appl Num</b>	<b>Appl Date</b>	<b>Inventors</b>	<b>Title</b>
12/355512	1/16/2009	Do-II Chang, Wayne S. Pelouch	Optical Communication Using Coupled Optically Pumped Amplifiers
14/109735	12/17/2013	Do-II Chang, Wayne S. Pelouch, Stephen M. Webb, John Ellison	Repeater OTDR Using Repeater Based Raman Pumps
14/341323	7/25/2014	Herve Fevrier	Network Management System Architecture of a Telecommunications Network
14/638,651	3/4/2015	Do-II Chang, Wayne S. Pelouch	Multi-Span Optical Communicatons Link Having Remote Optically Pumped Amplifier
14/697,039	4/28/2014	Wayne S. Pelouch, Stephen M. Webb, John Ellison	Feedback Controlled Raman Amplification in Optical System
62/258360	11/20/2015	Herve Fevrier	System and Method For Reversing The Communication Direction Over An Optical Fiber To Support Asymmetrical Communications Or Other Functions In An Optical Network
62/264211	12/7/2015	Do-II Chang, Herve Fevrier	Optical Transmission System That Allows Maximization of Transmission Capacity By Wiring Additional Optical Fibers
15/060,973	March, 2016	Do-II Chang,	Architecture of an Optical Transmission System and the Corresponding Architecture of Remote Optically Pumped Amplifiers
15/152,358	May, 2016	Herve Fevrier	Optical Network with Unidirectional Optical Channels and Bidirectional Equipment

All foreign patent applications filed by Seller or any of the Seller Affiliates, including any of the following:

<b>Appl Num</b>	<b>Appl Date</b>	<b>Inventors</b>	<b>Title</b>	<b>Country</b>	<b>Applicant</b>	<b>STATUS</b>
06765080.4	7/21/2006	Alan Olway	Twin Optical Amplifier with Dual Pump Power Control	Europe	Xtera Communications Ltd	<b>Pending</b>
14719345.2	3/12/2014	Do-II Chang, Wayne S. Pelouch, Stephen M. Webb	Tilt Control Through Pump Power Adjustment	Europe	Xtera Communications Inc.	<b>Pending</b>
07751194.7	2/19/2007	Do-II Chang, Andrej B. Puc, Andrej S. Kaminski	System and Method for Implementing a Boosterless Optical Communication System	Europe	Xtera Communications Inc.	<b>Pending</b>
10741834.5	2/12/2010	Do-II Chang, Wayne S. Pelouch	Submarine Optical Repeater	Europe	Xtera Communications Inc.	<b>Pending</b>
14702391.5	1/15/2014	Kevin Willoughby, John Durban, Adam Arnold	Optical Repeater Amplifier Insertion and Removal Technology	Europe	Xtera Communications Inc.	<b>Pending</b>
09810515.8	8/25/2009	Do-II Chang, Andrej B. Puc	Remote Larger Effective Area Optical Fiber	Europe	Xtera Communications Inc.	<b>Pending</b>
09011659.1	1/12/2001	Mohammed N. Islam, Michael J. Freeman	Raman Amplifier With Bi-	Europe	Xtera Communications	<b>Pending</b>

Appl Num	Appl Date	Inventors	Title	Country	Applicant	STATUS
			Directional Pumping (div 1)		Inc.	
12726635.1	5/11/2012	Stephen M. Webb	Polarization Multiplexed Signaling Using Time Shifting in Return-to-Zero Format	Europe	Xtera Communications Inc.	<b>Pending</b>
10741833.7	2/12/2010	Do-Il Chang, Wayne S. Pelouch	Optical Communication using Shared Optical Pumps	Europe	Xtera Communications Inc.	<b>Pending</b>
10732098.8	1/14/2010	Do-Il Chang, Wayne S. Pelouch	Optical Communication using Coupled Pumped Amplifiers	Europe	Xtera Communications Inc.	<b>Pending</b>
09701225.6	1/7/2009	Do-Il Chang, Wayne S. Pelouch, Herve A. Fevrier	Optical Amplifier Bandwidth Alteration	Europe	Xtera Communications Inc.	<b>Pending</b>
14755198	7/25/2014	Herve Fevrier	Network Management System Architecture of a Telecommunications Network	Europe	Xtera Communications Inc.	<b>Pending</b>
14714759.9	2/20/2014	James A. Hess	Integrated Assembly for Switching Optical Signals	Europe	Xtera Communications Inc.	<b>Pending</b>
10776470.6	10/26/2010	Do-Il Chang, Wayne S. Pelouch	Distinct Dispersion	Europe	Xtera Commun	<b>Pending</b>

Appl Num	Appl Date	Inventors	Title	Country	Applicant	STATUS
			Compensation for Coherent Channels and Non-Coherent Channels		ications Inc.	
14716629.2	3/12/2014	Gerhard W. Van Lochem	Control of Repeatere d Optical Communi cations System	Europe	Xtera Communi cations Inc.	<b>Pending</b>
10730500.5	6/11/2010	Stephen M Webb, John Ellison	A Polarisation Controller	Europe	Xtera Communi cations Inc.	<b>Pending</b>
08806615.4	10/16/2008	Sumudu Geethika Edirisinghe, Jorg Erich Schwartz, Wai Mun Wong	Phase Shift Keyed High Speed Signaling	Europe	Xtera Communi cations Ltd	<b>Pending</b>
15198113.1	12/4/2015	Stephen Desbruslais, Stuart Barnes	Optical Bypass Switch for Branching Unit	Europe	Xtera Communi cations Ltd	<b>Pending</b>
1521459.6	12/04/2015	Stephen Desbruslais, Alistair Hill	Submarine System Branching Unit	UK	Xtera Communi cations Ltd	<b>Pending</b>
PCT/US2015/018780	3/4/2015	Wayne S. Pelouch; Do-II Chang	Multi-Span Optical	PCT	Xtera Communi cations, Inc.	<b>Pending</b>
PCT/US2016/020928	3/4/2016	Do-II Chang; Philippe Andre Perrier; Herve A. Fevrier	Optical Transmissi on System	PCT	Xtera Communi cations, Inc.	<b>Pending</b>
PCT/GB2016/051320	5/9/2016	Herve Fevrier	Optical Network	PCT	Xtera Communi cations, Inc.	<b>Pending</b>



<b>Appl Num</b>	<b>Appl Date</b>	<b>Inventors</b>	<b>Title</b>	<b>Country</b>	<b>Applicant</b>	<b>STATUS</b>
1602313.7	2/9/2016	Stephen Desbruslais; Maria Ionescu	COTDR, Golay codes, FSK	UK	Xtera Communications, Limited	<b>Pending</b>
10776870.7	10/26/2010	Do-Il Chang, Wayne S. Pelouch	Introduction-Side Dispersion Shifting of Channels	Europe	Xtera Communications Inc.	<b>Pending</b>
JP 2015-552910	7/1/2015		Optical Repeater Amplifier Insertion and Removal Technology	Japan	Xtera Communications, Inc.	<b>Pending</b>

**Section 2.1(a)(vi) – Transferred Trademarks**

All trademarks of Seller or any of the Seller Affiliates, including, without limitation, the following:

BB Ref.	Client	Applicant	Mark	Country	Class	Filing Date	Application No.	Grant, Regn Date	Registration No.	Renewal Due
RJN83548T.C A	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A	Canada	Class 9	9/21/200 0	1075678	6/12/200 3	TMA5836 09	6/12/201 8
RJN83540T.C N	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A	China	Class 9	3/30/201 0	8162760	6/28/201 1	8162760	6/27/202 1
RJN83536T.E M	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A	European Union	Classes 9, 38 and 42	9/25/200 0	1870609	3/29/200 5	1870609	9/25/202 0
RJN83557T.J P	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A	Japan	Class 9	9/18/200 0	2000- 101699	2/8/2002	4542731	2/8/2022
RJN83574T.U S	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A & Device	United States of America	Class 9	5/24/200 0	76011575	8/12/200 3	2750767	8/12/202 3
RJN83573T.U S	Xtera Communications, Inc.	Xtera Communications, Inc.	XTER A	United States of America	Class 9	11/29/19 99	75859955	11/25/20 03	2786774	11/25/20 23

**Section 2.1(a)(x) – Other Assets**

To the extent not otherwise a Transferred Asset, all the Other Long-Term Assets, Other Current Assets, Prepaid Expenses and Other Deferred Costs and Intangible Assets of Seller as set forth on the balance sheet of Seller dated as of September 30, 2016.

All marketing materials related to any Transferred Technology, Transferred Trademarks, Transferred Patents or intellectual property used by the Business under license.

**Section 2.1(b)(i) – Excluded Assets**

The following Inventory of the Seller and the Seller Affiliates as of August 31, 2016:

IDENTIFIER	DESCRIPTION	QUANTITY
130-0029-004	PCBA, AMP LSR,20	20
130-0030-001	PCB ASSY, 40MM FAN/LED	50
130-0044-002	PCB ASSY, TSC	2
130-0049-001	PCB ASSY, TRANSPONDER BACKPLANE	5
130-0053-003	PCBA, SBA LSR	3
130-0059-002	PCB ASSY, MDM8	1
130-0065-002	PCB ASSY, OCHM	4
130-0085-001	PCB ASSY, APM4-TEM2	3
130-0103-002	PCB ASSY, AMP CTL	5
130-0107-002	PCB ASSY, APM4	36
130-0155-001	PCB ASSY, AXSUN OCM INTERFACE	11
130-0163-001	PCB ASSY, OSC RX LOL	13
130-0165-002	PCB ASSY, 2DFA SIG	1
130-0165-003	PCB ASSY, 3DFA SIG	41
130-0165-004	PCB ASSY, SBA SIG	3
130-0165-011	PCB ASSY, SA SIG BOARD	1
130-0167-001	PCB ASSY, OSC TX SUB BOARD	8
130-0170-001	PCB ASSY, OADM RMM MAIN	2
130-0195-001	PCB ASSY, EFEC/UFEC, XP MAIN, TXPIIBP,	7
130-0210-001	AB00021AA, SBR FLEXI ASSEMBLY	22
130-0215-101	MPD MOTHERBOARD PBA (RUBICON)	25
130-0242-001	MPD MOTHERBOARD PBA (TENABO 2)	17
140-2002-001	SUBASSY, SIG, LINE AMP, SSMF	1
140-2004-001	SUBASSY, OPTICS, PMP, LINE AMP,SSMF	1
150-0569-001	OPTICAL SUB-ASSY, OCHM-A, LEFT	1
150-0577-001	SUBASSEMBLY, UR OSC-1550 TX SUB BOARD	1
150-2021-101	SUBASSY, LASER, LINE AMP	1
150-2026-101	SUBASSY, CORE, SBA 1	2
150-2027-005	ASSY, MULTIFIBER DCM, EWBDK-C/L: 1065	2
150-2030-101	SUBASSY, CORE-SBA1-2S	1
150-3010-002	MECH ASSY, OC192 EFEC XP, MAIN AND CLIEN	2
217-0019-003	PCB, OAC MOTHERBOARD	23
217-0029-004	PCB, AMP LSR,20	95
217-0030-001	PCB, 40MM FAN/LED	86
217-0034-001	PCB, DFA PMP	189
217-0044-002	PCB, TSC	5
217-0046-004	PCB, MDM30	8

IDENTIFIER	DESCRIPTION	QUANTITY
217-0053-003	PCB, SBA LSR,8	351
217-0059-002	PCB, MDM8	8
217-0065-002	PCB, OCHM	16
217-0065-002	PCB, OCHM	9
217-0066-003	PCB, OCHM SUB, AXSUN	12
217-0066-003	PCB, OCHM SUB, AXSUN	9
217-0085-001	PCB, APM-4 TEM2	2
217-0103-002	PCB, AMP CTL	86
217-0104-001	PCB, AMP PWR	7
217-0107-002	PCB, APM4	45
217-0149-001	PCB T-MUX SUB	28
217-0151-802	PCB, MULTIRATE LR INTERCONNECT, 1 QMS	5
217-0165-001	PCB, AMP SIG	134
217-0170-001	PCB, OADM RMM MAIN	7
217-0171-001	FILLER PCB	90
217-0172-001	PCB, EFEC XP MAIN	8
217-0173-001	PCB XFP SUB	10
217-0176-001	PCB Tunable LR SUB Multirate	26
217-0179-001	PCB, EFEC XP MAIN, TXPIIBP	205
217-0181-001	PCB T-MUX CLIENT SUB, XCVR	13
217-0182-001	PCB, TMXPII MAIN	15
217-0188-002.	PCB, MAIN BOARD, ES APM, REV 2	9
217-0189-002.	PCB, SUB BOARD, ES APM, REV 2	9
217-0200-001	PCB EFEC/UFEC XP MAIN TXPIIBP. CLIENT Q	25
217-0206-001	AB00001AA, ACM PRINTED BOARD	25
217-0210-002	ACTIVE SUPERVISORY MOTHERBOARD PCB	24
217-0214-001	AB00009AA, LLT TUNABLE LASER BOARD (FITE	15
217-0215-001	AB00020AB, SBR FLEXI	26
217-0219-001	AB00040AA, MULTIPLE LINE LOADER FLEXI	23
217-0221-001	AB00050AA, PSP MOTHERBOARD	8
217-0222-001	AB00052AA, PSP OPTICAL DAUGHTER BOARD	15
217-0224-001	AB00063AC, MPD MOTHERBOARD PCB	10
217-0226-001	AB00067AC, MPD POWER PCB	1
217-0231-001	03-009-105, LED FLEX PCB	21
217-0242-003	MPD MOTHERBOARD PCB (TENABO 2)	26
217-0242-004	MPD MOTHERBOARD PCB (TENABO 2)	22
217-0289-004	TUNABLE LOADER MODULE FLEX-RIGID PCB	4
220-0010-001	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	36
220-0010-021	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	5
220-0010-024	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	36
220-0010-027	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	4

IDENTIFIER	DESCRIPTION	QUANTITY
220-0010-030	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	10
220-0010-033	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	8
220-0010-036	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	6
220-0010-039	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	6
220-0010-042	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	20
220-0010-045	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	8
220-0010-051	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	8
220-0010-060	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	9
220-0010-063	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	1
220-0010-066	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	5
220-0010-075	CABLE ASSY, GND, 18AWG, GRN/YEL, #8 RING	70
220-0011-003	CABLE ASSY, PWR A, PDU/FP	29
220-0011-004	CABLE ASSY, PWR B, PDU/FP	30
220-0011-005	CABLE ASSY, GND, PDU/FP/GND BAR	59
220-0021-001	RIBBON CABLE, 2MM GRID, 10POS, 6.0 LONG,	33
220-0021-001	RIBBON CABLE, 2MM GRID, 10POS, 6.0 LONG,	17
220-0021-002	RIBBON CABLE, 2MM GRID, 10POS, 3.2 LONG,	13
220-0037-001	RIBBON CABLE, 2MM GRID, 20POS, 3.0 LONG,	91
220-0048-001	RIBBON CABLE, 2MM GRID, 34POS, 2.0 LONG,	8
220-0048-001	RIBBON CABLE, 2MM GRID, 34POS, 2.0 LONG,	7
220-0052-001	CABLE ASSY, SUPER-RED LED, 635NM, 600MM	16
220-0053-001	CABLE ASSY, PDU INHIBIT	1
220-0172-001	LED HARNESS, OADM PIU	11
220-0199-001	HARNESS, A PWR, V1, APM	1
220-0200-001	HARNESS, B PWR, V1	1
220-0201-001	HARNESS, A PWR, V2	3
220-0203-001	HARNESS, A PWR, APM, V4	15
220-0204-001	HARNESS, A PWR, V3	3
220-0205-001	HARNESS, B PWR, V3	2
220-0206-001	HARNESS, A PWR, V5	1
220-0207-001	HARNESS, B PWR, V5	1
220-0211-001	HARNESS, A PWR, UR	30
220-0212-001	HARNESS, B PWR, UR	28
220-0223-001	RJ45 CAT 5E STP PATCH, PUR, X-CTR	12
220-0243-001	AC00017BA, CAN LINK EXTENSION CABLE (1.3	6
220-0244-001	AC00017BB, CAN LINK EXTENSION CABLE (2.5	9
220-0270-001	AQ10001BA, CAT5E UTP PATCH CABLE, 1M, BL	15
220-0271-001	AQ10001BB, CAT5E UTP PATCH CABLE, 2M, BL	15
220-0304-001	AC00021AA, ALARM CABLE, RAU TO SBR	7
220-0351-027	CABLE ASSY, PWR, 18AWG, 2 COND, RAMAN SH	5
220-0351-042	CABLE ASSY, PWR, 18AWG, 2 COND, RAMAN SH	7

IDENTIFIER	DESCRIPTION	QUANTITY
220-0351-075	CABLE ASSY, PWR, 18AWG, 2 COND, RAMAN SH	40
220-0352-043	CABLE ASSY, GND, 10AWG, GRN/YEL, TWO-HOL	54
220-0352-058	CABLE ASSY, GND, 10AWG, GRN/YEL, TWO-HOL	31
220-0352-076	CABLE ASSY, GND, 10AWG, GRN/YEL, TWO-HOL	28
220-0352-078	CABLE ASSY, GND, 10AWG, GRN/YEL, TWO-HOL	1
220-0352-090	CABLE ASSY, GND, 10AWG, GRN/YEL, TWO-HOL	28
220-0353-043	CABLE ASSY, PWR, 10AWG, RED&BLK, TWO-HOL	3
220-0353-045	CABLE ASSY, PWR, 10AWG, RED&BLK, TWO-HOL	5
220-0353-058	CABLE ASSY, PWR, 10AWG, RED&BLK, TWO-HOL	32
220-0353-075	CABLE ASSY, PWR, 10AWG, RED&BLK, TWO-HOL	18
220-0353-076	CABLE ASSY, PWR, 10AWG, RED&BLK, TWO-HOL	2
220-0355-018	CABLE ASSY, PWR-A, 18AWG, 4 COND, ES-APM	10
220-0355-021	CABLE ASSY, PWR-A, 18AWG, 4 COND, ES-APM	9
220-0355-024	CABLE ASSY, PWR-A, 18AWG, 4 COND, ES-APM	28
220-0355-026	CABLE ASSY, PWR-A, 18AWG, 4 COND, ES-APM	47
220-0356-018	CABLE ASSY, PWR, 18AWG, 3 COND, 18IN	8
220-0356-021	CABLE ASSY, PWR, 18AWG, 3 COND, 21IN	26
220-0356-024	CABLE ASSY, PWR, 18AWG, 3 COND, 24IN	10
220-0356-029	CABLE ASSY, PWR, 18AWG, 3 COND, 29IN	43
220-0356-030	CABLE ASSY, PWR, 18AWG, 3 COND, 30IN	2
220-0356-033	CABLE ASSY, PWR, 18AWG, 3 COND, 33IN	6
220-0356-036	CABLE ASSY, PWR, 18AWG, 3 COND, 36IN	2
220-0356-039	CABLE ASSY, PWR, 18AWG, 3 COND, 39IN	2
220-0356-048	CABLE ASSY, PWR, 18AWG, 3 COND, 48IN	8
220-0356-063	CABLE ASSY, PWR, 18AWG, 3 COND, 63IN	4
220-0357-027	CABLE ASSY, PWR, 18AWG, 2 COND, 27IN	18
220-0357-030	CABLE ASSY, PWR, 18AWG, 2 COND, 30IN	6
220-0357-042	CABLE ASSY, PWR, 18AWG, 2 COND, 42IN	51
230-0134-002	HOUSING, FAN, DFA	68
230-0136-001	CHASSIS ASSY APM-I	93
230-0137-001	LID CLOSEOUT ASSY APM	96
230-0138-001	LID ASSY APM	96
230-0139-001	PLENUM ASSY FAN 1U	129
230-0152-001	COVER, BOTTOM, LED BOX, DFA	152
230-0171-005	FACE PLATE MACHINED	10
230-0181-001	FILTER, AIR, TRANSPONDER, 23"	18
230-0186-002	FACEPLATE TSC MACH	12
230-0189-001	COVER CARD CAGE TRANSPONDER 23" 2 ROW	36
230-0196-002	BASEPLATE-V2, SBA	55
230-0197-004	CHASSIS, OPTICS, SBA	39
230-0198-002	FLANGE MOUNTING ETSI RIGHT SBA	36

IDENTIFIER	DESCRIPTION	QUANTITY
230-0201-001	COVER TOP SBA	181
230-0207-001	FLANGE MOUNTING ETSI 2U LEFT	85
230-0208-001	FLANGE MOUNTING ETSI 2U RIGHT	27
230-0210-001	PLATE COVER SBA OPTICS	83
230-0215-001	CHASSIS ASSY APM-T	16
230-0216-001	ASSY LID APM	16
230-0227-003	FACEPLATE MDM8 MACH	106
230-0243-001	RETAINER CLIP SPOOL	376
230-0249-002	FIBER GUIDE MDM8 OFFSET	52
230-0411-001	HEATSINK TUNEABLE LR SUB	15
230-0439-001	TRAY OPTICAL COMP SBSCS	3
230-0440-001	COVER FRONT SBSCS	2
230-0441-001	COVER REAR SBSCS	2
230-0474-001	BEZEL, LINE AMP	278
230-0513-001	COVER, MDM8, BACK	107
230-0514-001	COVER MDM8 FRONT	14
230-0543-001	BEZEL, SBA SSMF	81
230-0544-001	BEZEL 2U APM-T	14
230-0550-001	BAR BUS PE GROUND	101
230-0553-001	BEZEL 1U APM-I	95
230-0560-001	BEZEL BOOSTER AMP	16
230-0568-001	BEZEL 2U DCU	16
230-0571-001	INSULATOR SHELF	47
230-0573-001	CHASSIS BASE DCU-2RU	16
230-0575-001	LID ASSY DCU-2RU	16
230-0578-001	BLOCK 2MM FIBER MOUNT	4
230-0589-001	BRACKET, FIBER CLAMP	5
230-0595-002	BRKT, AXSUN OCM, FRONT	38
230-0616-001	LID, HOUSING, LED, OADM PIU	61
230-0616-001	LID, HOUSING, LED, OADM PIU	14
230-0682-001	COVER OADM RMM	50
230-0683-001	CARDGUIDE, OADM	76
230-0683-001	CARDGUIDE, OADM	128
230-0686-002	OPTICAL INTERFACE PANEL OADM	38
230-0687-001	OPTICAL INTERFACE BASE OADM RMM (REV A00	64
230-0689-001	FIBER ROUTER BASE OADM RMM	33
230-0689-001	FIBER ROUTER BASE OADM RMM	53
230-0711-001	HOUSING LED OADM PIU	51
230-0711-001	HOUSING LED OADM PIU	34
230-0725-001	Fiber Guide DLCPM	56
230-0726-001	Cartridge Base	68



IDENTIFIER	DESCRIPTION	QUANTITY
230-0727-001	CARTRIDGE LID	129
230-0769-001	CHASSIS, BASE, APM OSC	6
230-0769-001.	CHASSIS, BASE, APM OSC	5
230-0771-001.	BEZEL, 2U, APM OSC	9
230-0773-001.	CARDGUIDE, APM OSC	11
230-0777-001	BEZEL OPSM	54
230-0847-001	AP00234AA, RCP BLANKING PLATE	19
230-0857-001	AE00015AB, PTE2000 SIDE PANEL KIT	37
230-0861-001	AP00032AA, FAN TRAY PLENUM	9
230-0871-001	AP00060AA, LC BLANK (PORT 3)	18
230-0872-001	AP00061AA, LC BLANK (PORT 6)	29
230-0893-001	AP00101AB, TRANSPONDER FIBRE TRAY	15
230-0897-001	AP00111AA, RH HEATSINK, PSP	3
230-0903-001	AP00123AA, MLL EMI GASKET	260
230-0906-001	AP00128AA, MLL RAIL	200
230-0908-001	AP00131AA, MLL BACK-BOX	18
230-0912-001	AP00135AA, LLM LID	3
230-0913-001	AP00136AA, LLM FIXING PLATE	1
230-0929-001	AP00173AB, ADHESIVE PAD	38
230-0933-001	AP00178AA, LH HEATSINK, PSP	19
230-0937-001	AP00182AA, LH HEATSINK, AMPLIFIER	25
230-0939-001	AP00187AA, CONNECTOR PIN INSULATOR STRIP	20
230-0941-001	AP00190AA, RH HEATSINK, 20G MPD	68
230-0942-001	AP00191AA FIBRE TRAY 20G MPD	113
230-0946-001	AP00205AA, XFP INSERT GASKET (HARD)	106
230-0946-002	AP00205AB, XFP INSERT GASKET (HEATSINK)	25
230-0947-001	AP00206AA, XFP INSERT GASKET (SOFT)	97
230-0947-002	AP00206AB, XFP INSERT GASKET (CAGE)	18
230-0954-001	AP00219AA, XFP HEATPIPE ASSEMBLY	46
230-0958-001	AP00238AA, PACK GUIDE	354
230-0959-001	AR00008AB, PTE2000 RACK DOOR ASSEMBLY	10
230-0968-001	02-031-168, IOLON FILTER LID	15
230-0988-001	03-010-102, RIGHT HEATSINK M/C OCP	4
230-0992-001	03-010-116, PEDESTAL - ETHERNET	1
230-0993-001	03-010-117, PEDESTAL - LINEAR REGULATOR	1
230-1019-001	03-015-007, LH HEATSINK ASSY, ASP	10
230-1020-001	03-015-102, RH HEATSINK, SUPERVISORY	20
230-1021-001	03-015-105, FPGA THERMAL PEDESTAL	17
230-1025-001	03-009-011, RH HEATSINK ASSEMBLY	25
230-1029-001	03-013-011, 1U CHASSIS ASSEMBLY	12
230-1031-001	03-013-016, 2U CHASSIS ASSEMBLY	13

IDENTIFIER	DESCRIPTION	QUANTITY
230-1067-001	ASSY, EJECTOR W/LATCH, DUAL CHNL XFP TR	94
230-1074-001	COVER, OPSM-XP	10
230-1076-001	BEZEL, OPSM-XP	10
230-1077-001	HOUSING, LED, OPSM	10
230-1079-001	FRONT PANEL, LC CONNECT, RIGHT	10
230-1080-001	FRONT PANEL, LC CONNECT, LEFT	10
230-1081-001	ROUTER, FIBER, RIGHT, OPSM-X	20
230-1110-001	PTE2000 RACK REAR COVER	24
311-0007-001	AZ00457, INGAAS PIN DIODE, PDINP0751LCD	15
311-0009-002	43G BALANCED PIN/TIA, BPRV2125A	130
315-0021-001	AZ00475 PUMP LASER MODULE 1458NM FOL14	25
316-0029-003	2MM F3000-STR F3000-STR 3M	24
316-0029-004	2MM F3000-STR F3000-STR 4M	14
316-0029-008	2MM F3000-STR F3000-STR 8M	40
316-0029-008	2MM F3000-STR F3000-STR 8M	37
316-0029-009	2MM F3000-STR F3000-STR 0.19M	72
316-0041-001	2MM LC/APC LC/APC 0.22M	66
316-0048-012	MDM30 LC/APC-STR LC/APC-RA SL01-RX	6
316-0048-021	FIBER, MDM30, 1.6MM, YEL, LC/APC-STR BO	2
316-0048-022	FIBER, MDM30, 1.6MM, YEL, LC/APC-STR BO	2
316-0048-031	FIBER, MDM30, 1.6MM, YEL, LC/APC-STR BOO	1
316-0048-032	FIBER, MDM30, 1.6MM, YEL, LC/APC-STR BOO	2
316-0048-041	FIBER MDM30 1.6MM YEL LC/APC-STR BOOT L	2
316-0048-042	FIBER MDM30 1.6MM YEL LC/APC-STR BOOT L	2
316-0048-051	FIBER, MDM30	13
316-0048-052	FIBER, MDM30	13
316-0048-061	FIBER, MDM30, SL06-TX	3
316-0048-062	FIBER, MDM30, SL06-RX	2
316-0048-071	MDM30 LC/APC-STR LC/APC-RA SL07-TX	5
316-0048-071	MDM30 LC/APC-STR LC/APC-RA SL07-TX	2
316-0048-072	MDM30 LC/APC-STR LC/APC-RA SL07-RX	5
316-0048-072	MDM30 LC/APC-STR LC/APC-RA SL07-RX	3
316-0048-081	MDM30 LC/APC-STR LC/APC-RA SL08-TX	3
316-0048-081	MDM30 LC/APC-STR LC/APC-RA SL08-TX	2
316-0048-082	MDM30 LC/APC-STR LC/APC-RA SL08-RX	3
316-0048-082	MDM30 LC/APC-STR LC/APC-RA SL08-RX	3
316-0048-091	MDM30 LC/APC-STR LC/APC-RA SL09-TX	1
316-0048-092	MDM30 LC/APC-STR LC/APC-RA SL09-RX	1
316-0048-101	MDM30 LC/APC-STR LC/APC-RA SL10-TX	2
316-0048-102	MDM30 LC/APC-STR LC/APC-RA SL10-RX	2
316-0048-111	MDM30 LC/APC-STR LC/APC-RA SL11-TX	2

IDENTIFIER	DESCRIPTION	QUANTITY
316-0048-111	MDM30 LC/APC-STR LC/APC-RA SL11-TX	3
316-0048-112	MDM30 LC/APC-STR LC/APC-RA SL11-RX	2
316-0048-112	MDM30 LC/APC-STR LC/APC-RA SL11-RX	3
316-0048-121	MDM30 LC/APC-STR LC/APC-RA SL12-TX	5
316-0048-121	MDM30 LC/APC-STR LC/APC-RA SL12-TX	4
316-0048-122	MDM30 LC/APC-STR LC/APC-RA SL12-RX	3
316-0048-122	MDM30 LC/APC-STR LC/APC-RA SL12-RX	2
316-0048-131	MDM30 LC/APC-STR LC/APC-RA SL13-TX	1
316-0048-131	MDM30 LC/APC-STR LC/APC-RA SL13-TX	1
316-0048-132	MDM30 LC/APC-STR LC/APC-RA SL13-RX	3
316-0048-141	MDM30 LC/APC-STR LC/APC-RA SL14-TX	5
316-0048-142	MDM30 LC/APC-STR LC/APC-RA SL14-RX	2
316-0048-151	MDM30 LC/APC-STR LC/APC-RA SL15-TX	1
316-0048-152	MDM30 LC/APC-STR LC/APC-RA SL15-RX	7
316-0048-152	MDM30 LC/APC-STR LC/APC-RA SL15-RX	1
316-0048-161	MDM30 LC/APC-STR LC/APC-RA SL16-TX	9
316-0048-162	MDM30 LC/APC-STR LC/APC-RA SL16-RX	40
316-0048-162	MDM30 LC/APC-STR LC/APC-RA SL16-RX	8
316-0048-171	MDM30 LC/APC-STR LC/APC-RA SL17-TX	8
316-0048-171	MDM30 LC/APC-STR LC/APC-RA SL17-TX	1
316-0048-172	MDM30 LC/APC-STR LC/APC-RA SL17-RX	6
316-0048-172	MDM30 LC/APC-STR LC/APC-RA SL17-RX	1
316-0048-181	MDM30 LC/APC-STR LC/APC-RA SL18-TX	2
316-0048-181	MDM30 LC/APC-STR LC/APC-RA SL18-TX	6
316-0048-182	FIBER, MDM30	2
316-0048-182	FIBER, MDM30	8
316-0048-191	MDM30 LC/APC-STR LC/APC-RA SL19-TX	1
316-0048-191	MDM30 LC/APC-STR LC/APC-RA SL19-TX	4
316-0048-192	MDM30 LC/APC-STR LC/APC-RA SL19-RX	5
316-0048-192	MDM30 LC/APC-STR LC/APC-RA SL19-RX	4
316-0048-201	MDM30 LC/APC-STR LC/APC-RA SL20-TX	4
316-0048-201	MDM30 LC/APC-STR LC/APC-RA SL20-TX	5
316-0048-202	MDM30 LC/APC-STR LC/APC-RA SL20-RX	2
316-0048-202	MDM30 LC/APC-STR LC/APC-RA SL20-RX	7
316-0048-211	FIBER, MDM30	11
316-0048-211	FIBER, MDM30	4
316-0048-212	FIBER, MDM30	5
316-0048-212	FIBER, MDM30	4
316-0048-221	MDM30 LC/APC-STR LC/APC-RA SL22-TX	10
316-0048-221	MDM30 LC/APC-STR LC/APC-RA SL22-TX	4
316-0048-222	MDM30 LC/APC-STR LC/APC-RA SL22-RX	11

IDENTIFIER	DESCRIPTION	QUANTITY
316-0048-222	MDM30 LC/APC-STR LC/APC-RA SL22-RX	4
316-0048-231	MDM30 LC/APC-STR LC/APC-RA SL23-TX	2
316-0048-232	MDM30 LC/APC-STR LC/APC-RA SL23-RX	2
316-0048-241	MDM30 LC/APC-STR LC/APC-RA SL24-TX	1
316-0048-242	MDM30 LC/APC-STR LC/APC-RA SL24-RX	1
316-0048-251	MDM30 LC/APC-STR LC/APC-RA SL25-TX	6
316-0048-251	MDM30 LC/APC-STR LC/APC-RA SL25-TX	7
316-0048-252	MDM30 LC/APC-STR LC/APC-RA SL25-RX	6
316-0048-252	MDM30 LC/APC-STR LC/APC-RA SL25-RX	4
316-0048-261	MDM30 LC/APC-STR LC/APC-RA SL26-TX	15
316-0048-261	MDM30 LC/APC-STR LC/APC-RA SL26-TX	2
316-0048-262	MDM30 LC/APC-STR LC/APC-RA SL26-RX	19
316-0048-262	MDM30 LC/APC-STR LC/APC-RA SL26-RX	2
316-0048-271	MDM30 LC/APC-STR LC/APC-RA SL27-TX	10
316-0048-271	MDM30 LC/APC-STR LC/APC-RA SL27-TX	8
316-0048-272	MDM30 LC/APC-STR LC/APC-RA SL27-RX	25
316-0048-272	MDM30 LC/APC-STR LC/APC-RA SL27-RX	12
316-0048-281	MDM30 LC/APC-STR LC/APC-RA SL28-TX	10
316-0048-281	MDM30 LC/APC-STR LC/APC-RA SL28-TX	9
316-0048-282	MDM30 LC/APC-STR LC/APC-RA SL28-RX	10
316-0048-282	MDM30 LC/APC-STR LC/APC-RA SL28-RX	4
316-0048-291	MDM30 LC/APC-STR LC/APC-RA SL29-TX	6
316-0048-292	MDM30 LC/APC-STR LC/APC-RA SL29-RX	8
316-0048-301	MDM30 LC/APC-STR LC/APC-RA SL30-TX	4
316-0048-302	MDM30 LC/APC-STR LC/APC-RA SL30-RX	6
316-0048-302	MDM30 LC/APC-STR LC/APC-RA SL30-RX	4
316-0049-011	MDM8 LC/APC-STR LC/APC-RA SL01-TX	3
316-0049-011	MDM8 LC/APC-STR LC/APC-RA SL01-TX	3
316-0049-012	MDM8 LC/APC-STR LC/APC-RA SL01-RX	3
316-0049-012	MDM8 LC/APC-STR LC/APC-RA SL01-RX	3
316-0049-021	FIBER, MDM8,	2
316-0049-021	FIBER, MDM8,	1
316-0049-022	FIBER, MDM8,	2
316-0049-022	FIBER, MDM8,	1
316-0049-031	MDM8 LC/APC-STR LC/APC-RA SL03-TX	3
316-0049-032	MDM8 LC/APC-STR LC/APC-RA SL03-RX	3
316-0049-051	FIBER, MDM8,	4
316-0049-052	FIBER, MDM8,	4
316-0049-052	FIBER, MDM8,	4
316-0049-061	FIBER, MDM8,	4
316-0049-061	FIBER, MDM8,	1

IDENTIFIER	DESCRIPTION	QUANTITY
316-0049-062	FIBER, MDM8,	3
316-0049-062	FIBER, MDM8,	1
316-0049-071	FIBER MDM8 1.6MM YEL LC/APC-STR BOOT LC	2
316-0049-072	FIBER MDM8 1.6MM YEL LC/APC-STR BOOT LC	2
316-0049-082	FIBER, MDM8,	2
316-0049-091	FIBER, MDM8, 1.6MM, YEL, LC/APC-STR BOOT	1
316-0049-092	FIBER, MDM8, 1.6MM, YEL, LC/APC-STR BOOT	1
316-0054-008	FIBER 2MM YEL F3000/APC/8??-STR BOOT F	2
316-0054-013	2MM F3000/APC-STRF3000/APC-RA13M	3
316-0100-010	FIBER, 900μM YEL, 5MM BEND INSENSITIVE,	56
316-0100-018	4PAIR-HYDRA, LC/UPC, 18M	40
316-0100-020	FIBER, 900μM YEL, 5MM BEND INSENSITIVE,	71
318-0010-001	GAIN FIBER WBDK-L:674 (@ 1570NM)	30
318-0010-008	GAIN FIBER WBDK-C/L:319 (@ 1570NM)	2
318-0010-011	GAIN FIBER WBDK-C/L:768 (@ 1570NM)	3
318-0010-013	GAIN FIBER WBDK-C/L:775 (@ 1570NM) 40 X	2
318-0011-001	GAIN FIBER RAMAN FIBER 7.8KM	3
318-0011-001	GAIN FIBER RAMAN FIBER 7.8KM	2
318-0011-003	Gain Fiber Raman Fiber 7KM 40 X 205	2
318-0011-007	GAIN FIBER, RAMAN FIBER, 7KM, SPLIT @ 3K	12
318-0012-001	FIBER SPOOL DISP COMP 100 PS/NM (@ 1620	54
318-0012-002	FIBER SPOOL, DISP COMP, 200 PS/NM	37
318-0012-003	FIBER SPOOL DISP COMP 500 PS/NM (@ 1620	6
318-0013-001	FIBER SPOOL, DISP COMP, -100 PS/NM	9
318-0013-001	FIBER SPOOL, DISP COMP, -100 PS/NM	3
318-0013-002	DISP COMP -200 PS/NM (@ 1620NM)	19
318-0013-003	DISP COMP -500 PS/NM (@ 1620NM)	5
318-0013-003	DISP COMP -500 PS/NM (@ 1620NM)	1
318-0013-004	FIBER SPOOL DISP COMP -800 PS/NM (@ 162	4
318-0018-002	MULTIFIBER DCMWBDK-C/L: 768	2
318-0019-001	FIBER SPOOL, EWBDK, DISP COMP, -800 PS/N	11
318-0019-003	FIBER SPOOL, EWBDK, DISP COMP, -1200 PS	5
318-0019-004	FIBER SPOOL EWBDK DISP COMP -1100 PS/NM	15
318-0019-005	FIBER SPOOL, EWBDK, DISP COMP, -100	2
318-0019-006	FIBER SPOOL EWBDK DISP COMP -200 PS/NM	4
318-0019-007	FIBER SPOOL, EWBDK, DISP COMP, -500 PS/N	5
318-0019-008	FIBER SPOOL, EWBDK, DISP COMP, -1300 PS/	1
318-0019-009	FIBER SPOOL EWBDK DISP COMP -1400 PS/NM	2
318-0020-001	GAIN FIBER, EWBDK-C/L:-330 (@ 1570NM), 4	107
318-0021-002	MULTIFIBER, EWBDK-C/L: -1065 PS/NM (@ 1	19
318-0033-001	AZ00607, SDC SPOOL -100PS/NM, LC	4

IDENTIFIER	DESCRIPTION	QUANTITY
318-0033-003	AZ00608, SDC SPOOL -200PS/NM, LC	12
318-0033-004	AZ00609, SDC SPOOL -300PS/NM, LC	5
318-0033-005	AZ00610, SDC SPOOL -400PS/NM, LC	5
318-0033-007	AZ00612, SDC SPOOL -800PS/NM, LC	4
318-0033-013	AZ00618, SDC SPOOL +100PS/NM, LC	4
318-0033-014	AZ00619, SDC SPOOL +200PS/NM, LC	4
318-0036-001	AZ00659, DDC SPOOL +400 PS/NM, LC	2
318-0039-007	AZ00763, SDC SPOOL -900PS/NM, LC	3
321-0046-004	OPTICAL MUX/DEMUX PAIR OADM 1B-O	29
321-0046-010	OPTICAL MUX/DEMUX PAIR OADM 2A-O	19
321-0046-010	OPTICAL MUX/DEMUX PAIR OADM 2A-O	4
321-0046-012	OPTICAL MUX/DEMUX PAIR OADM 2B-O	2
321-0046-012	OPTICAL MUX/DEMUX PAIR OADM 2B-O	2
321-0046-016	OPTICAL MUX/DEMUX PAIR OADM 2D-O	3
321-0046-030	OPTICAL MUX/DEMUX PAIR OADM 4C-O	1
321-0046-031	OPTICAL MUX/DEMUX PAIR OADM 4D-E	1
321-0051-001	NARROW BAND FILTER #14	44
321-0052-001	NARROW BAND FILTER #15 1425NM & 1439NM	49
321-0053-001	NARROW BAND FILTER #16	50
321-0054-001	NARROW BAND FILTER #17	46
321-0055-001	NARROW BAND FILTER #18	47
321-0119-001	AZ00501, TUNABLE FILTER	3
321-0130-001	AZ00968, BMD MODULE 3X10CH/50GHZ; 1551.7	6
321-0131-003	AZ00971, 1:10 MUX/DMUX 50GHZ; 1558.58->1	2
322-0005-001	AZ00555 LC ATTENUATOR PLUG 3DB	205
322-0005-007	AZ00778 LC ATTENUATOR PLUG 10DB	221
323-0001-057	WAVELOCKER 1593.79NM 20MW	1
323-0001-128	WAVELOCKER 1564.27NM 20MW	1
323-0001-130	WAVELOCKER 1563.45NM 20MW	1
323-0001-197	WAVELOCKER 1536.61NM 20MW	2
323-0001-199	WAVELOCKER 1535.82NM 20MW	4
323-0001-212	WAVELOCKER 1530.72NM 20MW	2
323-0001-216	WAVELOCKER 1529.16NM 20MW	1
323-0003-001	CW LASER, TUNABLE, 8 CH, 20MW, 1614.83-1	5
323-0003-002	TUNABLE 8 CH 20MW 1611.35-1614.39NM	5
323-0003-003	TUNABLE 8 CH 20MW 1607.90-1610.92NM	5
323-0003-004	TUNABLE 8 CH 20MW 1604.46-1607.47NM	2
323-0003-004	TUNABLE 8 CH 20MW 1604.46-1607.47NM	2
323-0003-006	TUNABLE 8 CH 20MW 1597.62-1600.60NM	5
323-0003-007	TUNABLE 8 CH 20MW 1594.22-1597.19NM	5
323-0003-007	TUNABLE 8 CH 20MW 1594.22-1597.19NM	5

IDENTIFIER	DESCRIPTION	QUANTITY
323-0003-008	TUNABLE 8 CH 20MW 1590.83-1593.79NM	5
323-0003-008	TUNABLE 8 CH 20MW 1590.83-1593.79NM	5
323-0003-009	TUNABLE 8 CH 20MW 1587.46-1590.41NM	5
323-0003-010	TUNABLE, 8 CH, 20MW, 1584.11-1587.04NM	2
323-0003-011	TUNABLE, 8 CH, 20MW, 1580.77-1583.69NM	5
323-0003-012	TUNABLE, 8 CH, 20MW, 1577.44-1580.35NM	5
323-0003-013	TUNABLE, 8 CH, 20MW, 1574.13-1577.03NM	5
323-0003-014	TUNABLE, 8 CH, 20MW, 1570.83-1573.71NM	5
323-0003-014	TUNABLE, 8 CH, 20MW, 1570.83-1573.71NM	4
323-0003-015	TUNABLE, 8 CH, 20MW, 1567.54-1570.42NM	5
323-0003-015	TUNABLE, 8 CH, 20MW, 1567.54-1570.42NM	5
323-0003-016	TUNABLE 8 CH 20MW 1564.27-1567.13NM	3
323-0003-017	TUNABLE 8 CH 20MW 1561.01-1563.86NM	5
323-0003-019	TUNABLE 8 CH 20MW 1554.54-1557.36NM	5
323-0003-019	TUNABLE 8 CH 20MW 1554.54-1557.36NM	4
323-0003-020	LASER, TUNABLE, 8 CH, 20MW, 1597.62-1	5
323-0003-020	LASER, TUNABLE, 8 CH, 20MW, 1597.62-1	1
323-0003-021	LASER, TUNABLE, 8 CH, 20MW, 1548.12-1	4
323-0003-022	TUNABLE, 8 CH, 20MW, 1544.92-1547.72NM	4
323-0003-022	TUNABLE, 8 CH, 20MW, 1544.92-1547.72NM	5
323-0003-023	TUNABLE, 8 CH, 20MW, 1541.75-1544.53NM	2
323-0003-024	TUNABLE 8 CH 20MW 1538.58-1541.35NM	3
323-0003-025	TUNABLE, 8 CH, 20MW, 1535.43-1538.19NM	5
323-0003-026	TUNABLE, 8 CH, 20MW, 1532.29-1535.04NM	5
323-0003-026	TUNABLE, 8 CH, 20MW, 1532.29-1535.04NM	5
323-0003-027	TUNABLE, 8 CH, 20MW, 1529.16-1531.90NM	4
323-0003-028	TUNABLE 8 CH 20MW 1526.05-1528.77NM	3
323-0003-028	TUNABLE 8 CH 20MW 1526.05-1528.77NM	2
323-0003-029	TUNABLE 8 CH 20MW 1522.95-1525.66NM	2
323-0003-029	TUNABLE 8 CH 20MW 1522.95-1525.66NM	1
323-0009-004	AE00714AA, CW LOADER DFB 194.6THZ (1540.	11
323-0009-014	AE00719AA, CW LOADER DFB 192.6THZ (1556.	9
323-0009-016	AE00720AA, CW LOADER DFB 192.2THZ (1559.	11
326-0009-001	AZ00149 UNCOOLED EDFA LC	15
326-0012-001	AZ00685, 30NM EDFA GAIN BLOCK, 1535-> 15	48
328-0005-001	AZ00531, OPTICAL ISOLATOR, 1460 Å±15NM,	44
329-0002-001	OPTICAL TX OSC CHANNEL 1625NM	95
329-0002-004	OPTICAL TRANSMITTER, OSC CHANNEL 1605.74	49
329-0010-001	AZ00842 LOW VPI MZ MODULATOR 10G	173
329-0012-001	SUBASSY OPSM-XP OPTICS	20
330-0027-003	HIGH SPEED POL CONTROLLER; 4-CELL, TEC,	166

IDENTIFIER	DESCRIPTION	QUANTITY
331-0005-001	VMUX (1-O)	17
333-0001-001	OPTICAL XCVR 2.5G SR 2X10	52
333-0001-001	OPTICAL XCVR 2.5G SR 2X10	24
333-0002-001	XFP TRANSCEIVER 10 GB/S SR SONET	5
333-0002-001	XFP TRANSCEIVER 10 GB/S SR SONET	14
333-0004-001	XFP TRANSCEIVER 10 GB/S IR-2 SONET	10
333-0006-002	XFP 1310 NM TRANSCEIVER, 10GB/S, SR-1	10
420-0065-001	AZ00189, P CHANNEL FET 1.8A, IRFL9014	4628
420-0077-001	AZ00507 HIGH CURRENT NPN TRANSISTOR ZX	673
430-0266-001	AZ00012, NIAGARA FEC ASIC, S19208CBI	3
430-0297-001	AZ00284 256X8 SPI SERIAL EEPROM AT2502	1000
430-0302-001	AZ00353, FLASH (4M X 8-BIT), TSOP-40	1500
430-0337-001	AZ00823, FPGA, 1704 BALL 32 ROCKET IO, L	41
430-0345-001	AZ00837 HIGH PRECISION OP-AMP AD8628	828
440-0026-001	IC FPGA VIRTEX-4 LX40 FF1148	86
440-0036-001	ALTERA STRATIX IV - EP4S100G2F40I1N 1517	56
450-0045-001	AZ00696, 48V TO 3V3 5A DC-DC CONVERTER,	14
450-0060-001	AZ00324, DC-DC 48 TO 5V, 1V8, 1V5, PT482	1
450-0102-001	9A, SYNCHRONOUS BUCK REGULATOR WITH INTE	34
510-0108-001	AZ00444, SMT YELLOW BI-LEVEL LEDS, YELLO	38
510-0109-001	AZ00445, SMT GREEN BI-LEVEL LEDS, GREEN	15
530-0337-001	AZ00038, 47R 0603 RESISTOR, 47R, 1% 100P	4754
530-0395-001	AZ00188, SMD LOW OHMIC SENSE RESISTOR, 1	3173
530-0429-001	AZ00316, 62K, 0.1% 25PPM, 50V, 0603	4717
530-0441-001	AZ00390, SMD LOW OHMIC SENSE RESISTOR, 2	18
530-0465-001	AZ00587, SMD LOW OHMIC SENSE RESISTOR, 3	3428
530-0494-001	AZ00946, 0805 680K 1/8W, 680KOHM 150V, 1	2
550-0097-001	AZ00456, SMD 455KHZ CERAMIC FILTER	933
550-0100-001	AZ00590, SMD POWER CHOKE, SHEILDED, 100U	37
550-0106-001	AZ00941, 820NH 0805 INDUCTOR, 820NH	942
580-0377-001	AZ00388, BACKPLANE POWER CONNECTOR, 8583	1767
610-0072-001	99-002-041, MACHINE SCREW, M2X6, CSK, PO	247
610-0080-001	99-002-051 MACHINE SCREW M3X8 CSK POZI	1000
610-0086-001	99-002-057, MACHINE SCREW, M3X8 (SEM), P	4018
610-0088-001	99-002-060, MACHINE SCREW, M4X12 (SEM),	20
610-0109-001	AQ30015AA, MACHINE SCREW, M4X8 (SEM), PA	55
610-0110-001	AQ30016AA, MACHINE SCREW, M4X8, CSK, POZ	52
610-0113-001	AQ30022AA, MACHINE SCREW, M2.5X5, PAN, P	80
620-0031-001	AQ30007AA, WASHER, M2, TOOTH LOCK, TYPE	4094
622-0046-001	AP00195AA, STANDOFF	34
622-0047-001	AP00196AA, GUIDE PILLAR	10



IDENTIFIER	DESCRIPTION	QUANTITY
622-0054-001	03-009-132, STANDOFF	220
623-0179-001	AQ30001AA, HDM GUIDE PIN FASTENER, 2-56 S	8000
650-0070-001	99-002-006, CORNER FIBRE GUIDE, 30MM RAD	90
710-0251-001	AP00074AA, LABEL, LASER HAZARD INFO (125	64
710-0253-002	AP00085AB, LABEL, SEISMIC RACK	102
710-0276-002	AP00184AB, LABEL, FRONT PANEL, PASSIVE S	71
710-0277-001	AP00210AA, LABEL, FRONT PANEL, MPD	20
710-0280-001	AQ50002AB, BAR CODE LABEL 8MMX25MM (HIGH	8094
760-0027-001	AF00001AA, PACKING CASE WITH PROTECTIVE	3

The following Equipment and other fixed assets of the Seller (as set forth on the Fixed Asset Summary Report of Seller):

Sys No	Description
3050	WS-C4507R+E
3051	CON-SNT-C4510R+
3052	WS-X45-SUP8-E
3053	WS-X4748-RJ45-E
3054	WS-X4748-RJ45-E
3055	WS-X4748-RJ45-E
3056	WS-X4748-RJ45-E
3057	WS-X4748-RJ45-E
3058	WS-X4748-RJ45-E
3059	WS-X4748-RJ45-E
3060	PWR-C45-2800ACV
3061	PWR-C45-2800ACV/
3064	WS-X45-SUP8-E/2
3065	WS-C4510R+E
3066	CON-SNT-C4510R+
3067	WS-X45-SUP8-E
3068	WS-X4748-RJ45-E
3069	WS-X4748-RJ45-E
3070	WS-X4748-RJ45-E
3071	WS-X4748-RJ45-E
3072	PWR-C45-2800ACV
3073	PWR-C45-2800ACV/
3076	WS-X45-SUP8-E/2
3077	WS-C4507R+E
3078	CON-SNT-C4507R+
3079	WS-X45-SUP8-E
3082	WS-X4748-RJ45-E
3083	WS-4712-SFP+E
3096	WS-4712-SFP+E
3109	WS-4712-SFP+E

Sys No	Description
3122	PWR-C45-2800ACV
3123	PWR-C45-2800ACV/
3124	WS-X4748-RJ45-E
3125	WS-X45-SUP8-E/2
3126	WS-C4507R+E
3127	CON-SNT-C4507R+
3128	WS-X45-SUP8-E
3131	WS-X4748-RJ45-E
3132	WS-4712-SFP+E
3145	WS-4712-SFP+E
3158	WS-4712-SFP+E
3171	PWR-C45-2800ACV
3172	PWR-C45-2800ACV/
3173	WS-X45-SUP8-E/2
3174	C6807-XL
3175	CON-SNT-C6807XLC
3176	C6807-XL-FAN
3177	CAB-CONSOLE-USB
3178	VS-S2T-10G
3179	C6800-16P10G
3180	C6800-XL-3KW-AC
3181	C6800-XL-3KW-AC
3192	S2TISK9-15201SY
3193	GLC-LH-SMD
3194	GLC-LH-SMD
3195	X2-10GB-T
3196	X2-10GB-T
3197	C6807-XL
3198	CON-SNT-C6807XLC

Sys No	Description
3199	C6807-XL-FAN
3200	CAB-CONSOLE-USB
3201	VS-S2T-10G
3202	C6800-16P10G
3203	C6800-XL-3KW-AC
3204	C6800-XL-3KW-AC
3215	S2TISK9-15201SY
3216	GLC-LH-SMD
3217	GLC-LH-SMD
3218	X2-10GB-T
3219	X2-10GB-T
674	USB Analyzer Inc
702	MANOMETER Pane
716	CATALYST 4000GB
717	CATALYST 4000 10/
718	CATALYST 4000 AC
734	ASSEMBLY Unit ZH
735	RECIRCULATING HU
1723	19" System Rack
750	CATALYST 4006 RM
752	RENOIR AP SW-F
753	MODEL SIM SE/VLO
755	RENOIR AP SW-F B
756	MODEL SIM SE/VLO
761	VISION ICE BUNDLE
762	VISION ICE BUNDLE
763	VISION ICE BUNDLE
764	EMULATION MODUL
765	EMULATION MODUL

Sys No	Description
766	MOTOROLA POWER
767	SOURCE CORRELA
773	TESTMOBILE
779	CONSUMABLES STA
787	OPTIC&ELEC PLUG
788	9953 & 2488 MB/S R
789	10 GB/S LIGHTWAV
793	VISIONICE BUNDLE
794	WO ZOO43478/1 AS
795	RECIRC HUMIDITY
820	FFP-TF TUNABLE F
821	110V CONTROLLER
823	RF MODULATION
1727	19" SYSTEM RACK W
830	RF MODULATION - 1
1728	19" SYSTEM RACK W
834	ELECTRICAL INTER
839	CATS DWOM SW: F
840	WANDER ANALYZE
841	WANDER ANALYZE
842	DROP & INSERT
843	ADD SDH
899	ABBENCH BS72434
1231	RACK
1731	D240-R19-H - 19" RA
1317	Data Storage Shelf
1481	PROVIDE AND INST
1507	PROVIDE AND INST
1932	Interface card for WT
1945	T50e-3-F-S-2
2337	APC Intelligent Modu
2338	APC Replacement Ba
2321	APC Symmetra Powe
2322	APC Symmetra Powe
2003	SW-AL-0703-LK-I
2004	SW-AL-0706-LK-I
2017	SW-AL-0706-LK-I
2018	SW-AL-0706-LK-I
2019	SW-AL-0706-LK-I
2020	SW-AL-0703-LK-I
3020	MNT-3584F-T2 / UPG
3031	3076/63.84;OC-192/S
142	INVERSE ASSEMBL

Sys No	Description
156	-4 ADVANCED ASS
157	PRO/INTRALINK WO
172	PCI-GPIB NI-488.2 S
325	OSE SINGLE PROJE
326	PORT DISTRIBUTED
327	TL1 AGENT DEVELO
447	PMA1 POWER MEA
450	TMDS3240160-07 C
451	TMDS326006201 C6
452	TMDS3P701014 C60
455	C-EOR-E2C-SDH8-D
456	C-EOR-E2C-SSGS-D
980	3122-09161 RATION
990	777073-01 GPIB CO
1006	P/N 776670-00 (LAB
1109	900851-01 TESTST
1122	778032-01 PCI-GPI
1212	IDS HOST SENSORY
1218	RATIONAL CLEARC
1219	RATIONAL CLEARC
1220	RATIONAL CLEARC
1227	RATIONAL SUITE D
1246	900851-01 TEST STA
1255	P/N 900851-01 TEST
1409	A08536F-200000 NE
1491	PART NO 900851-01
1551	FORTEC/C== COMP
1565	LUMOS TL1 WORKS
1566	TORNADO 2.2.1 STD
1598	PS2000-TBL;ALLEG
1703	ITEM NUMBER: 8214
1710	ASESActive POILAg
2432	333-0006-003
918	TDS8000 MAINFRA
1739	500-131492 Wind Ri
1741	500-131492 Wind Ri
1740	500-130893 Wind Ri
1756	AQ6140 Multi-Wavel
1757	Testpoint 17 Slot Cha
1758	Testpoint 17 Slot Cha
1762	Emulator for ES APM
1763	Data Quality Analyze
1767	ES Amp Calibration &

Sys No	Description
1768	ES Amp Calibration &
1769	ES Amp Calibration &
1783	ES Amp Calibration &
1784	ES Amp Calibration &
1785	ES Amp Calibration &
1786	MAPS+1K70112N3F
1787	MAPS+1K70112N3F
1777	ES Amp Calibration &
1778	ES Amp Calibration &
1789	ES Amp Module Test
1790	ES Amp Module Test
1791	ES Amp Module Test
1792	ES Amp Module Test
1793	ES Amp Module Test
1794	ES Amp Module Test
1795	ES Amp Module Test
1810	ES Amp Module Test
1832	Controller w/HMBA S
1843	CMA5K w/HD, chann
1859	ES Amp Module Test
1862	CMA5K w/HD, chann
1959	20600 SCANEXPRES
1961	HP/Agilent 83433A
1975	Processor eval on Op
1976	Processor eval on Op
1981	Scan Express
1983	Scan Express
1984	Sharp Digital Imager
1996	Fiber Probes for Test
1997	Dispersion Compens
1998	TDC Modules for RED
2000	20196 ScanExpress M
2001	20300 ScanExpress D
2040	Dual Interface module
2044	TAP & SW for CETS
2041	Programmable DC Po
2042	Programmable DC Po
2048	NI PCIE-6537 High-S
2049	Console Assy
2050	SIDE PANEL, QSN A
2051	I2C/SPI Interface
2053	Power Control Interfa
2290	RMM, 1RU EGM SHE

Sys No	Description
2306	92 XFP units part 333
2360	RMM, 9 PORT ROAD
2351	3076/06 ONT-606B O
2352	3076/60.11 MTM-4s4
2353	3076/60.11 MTM-4s4
2354	3076/63.37 OC192/S
2355	3076/63.37 OC192/S
2356	3076/63.22 OTN 10.7
2357	3076/63.22 OTN 10.7
2358	3076/63.03 10GIGE L
2359	3076/63.03 10GIGE L
2397	40G Coherent Modul
2423	HP 86120C Multi-Wa
2440	AscenLink 700A serie
2441	AscenFlow M2000A s
2446	PCB Assembly LLM (
2447	Test and Measureme
2448	Data Acquisition/Swit
2450	Optima TLM Proto (1
2451	Optima TLM Proto (1
2547	AC100-20W-00E
2923	160-2001-402
2469	Spirent Smartbits 200
2488	PVV Demo Unit
2491	AC100-LB0 NRZ L-B
2516	B-400-11-1550-8/125
2517	PFA-3A3A-1550-8/12
2518	PFA-3A3A-1550-8/12
2519	PFA-3A3A-1550-8/12
2520	PMJ-3A3A-1550-8/12
2521	FUSED-22-1550-8/12
2526	B-400-11-1550-8/125
2527	B-400-11-1550-8/125
2528	B-400-11-1550-8/125
2529	B-400-11-1550-8/125
2530	PFA-3A3A-1550-8/12
2531	PFA-3A3A-1550-8/12
2532	PFA-3A3A-1550-8/12
2533	PMJ-3A3A-1550-8/12
2534	PMJ-3A3A-1550-8/12
2535	PMJ-3A3A-1550-8/12
2536	FUSED-22-1550-8/12
2872	PVV Demo Unit - EXP

Sys No	Description
2873	PVV Demo Unit - EXP
2914	For Staging at MCA m
2925	Greenlee EK1240L11
2926	Greenlee EK1240L11
2927	GREENLEE EK1240
2928	FTB-7600E-NS1254-
2946	Rack for Lab 180-009
2947	AC040
2971	Lab Equipment for De
2952	Lab Equipment for De
2976	ML4013
2978	ML4013
2979	ML4013
2980	ML4013
2981	ML4013
2982	ML4013
182	100MHZ HIGH VOLT
183	2GHZ 4FS/S 4CH OS
184	50MHZ BANDWIDTH
185	PROFESSIONAL TE
186	RACK MOUNT POW
187	RACK MOUNT POW
188	RACK MOUNT POW
189	RACK MOUNT POW
190	BENCH TOP LINEAR
191	BENCH TOP LINEAR
192	BENCH TOP LINEAR
193	BENCH TOP LINEAR
194	BENCH TOP LINEAR
195	BENCH TOP LINEAR
196	BENCH TOP LINEAR
197	BENCH TOP LINEAR
198	BENCH TOP LINEAR
199	BENCH TOP LINEAR
200	BENCH SINGLE POW
201	BENCH SINGLE POW
202	TEST CART & HIGH
203	COLOR LOGIC ANA
205	ANALYZER CARD/3
206	MPC8260 POWER Q
207	MPC8260 POWER Q
208	MODULAR DEVELO
209	MODULAR DEVELO

Sys No	Description
210	MODULAR DEVELO
211	MPC850 INTERCHA
212	MPC850 INTERCHA
217	AIR VELOCITY SENS
218	OSCILLOSCOPE
219	HIGH SPEED BOUN
220	LASER CURTAIN
221	MODULAR CONTRO
222	MODULAR CONTRO
223	MODULAR CONTRO
224	MODULAR CONTRO
225	MODULAR CONTRO
230	RMKT TUNABLE LA
231	FIBER JUMPERS
232	FIBER OPTIC CABLE
233	ENCLOSURE FOR 4
235	OC 192 MODULATO
236	AC TO CD POWER R
237	CIRCUIT BOARD PA
238	POWER UNIT
239	SINGLEMODE BREA
240	SC-APC BUTT JOINT
241	MODULATOR=10 G
244	XNATREX PROGRA
245	XNATREX PROGRA
256	FIBER AMPLIFIER
257	OPTICAL SPECTRU
261	MODULAR BIAS CO
265	POWER SUPPLY & H
267	OPTICAL SWITCH M
268	OPTICAL SWITCH M
269	RACK MOUNT MAIN
271	LASER DIODE
272	OSCILLOSCOPE
273	LASER DIODE CON
274	LDD/TEC Y-CABLE
275	TELECOM LASER D
276	TELECOM LASER D
277	EXTERNAL CAVITY
278	EXTERNAL CAVITY
279	QUICK CIRCUIT MA
281	MULTI WAVELENGT
282	ANALYZER & LASER

Sys No	Description
284	PROJECTOR
1720	19" RACK WITH CAS
285	OSW MODULE/10 S
286	OSW MODULE
288	0-60 V 600 WATT PO
289	0-60 V 600 WATT PO
290	0-60 V 600 WATT PO
291	0-60 V 600 WATT PO
293	S BANK AWG 100 G
294	CABLE ASSY
295	TEST INSTRUMENT
297	INFOCUS LP 330XG
299	FITNESS EQUIPMEN
300	FITNESS EQUIPMEN
338	OPTICAL BREADBO
340	RACK MOUNT MAIN
341	RACK MOUNT MAIN
342	RACK MOUNT MAIN
343	RACK MOUNT MAIN
344	RACK MOUNT MAIN
345	RACK MOUNT MAIN
346	RACK MOUNT MAIN
347	S-BAND DFBS -20
348	S-BAND DFBS -20
349	S-BAND DFBS -20
350	S-BAND DFBS -20
351	S-BAND DFBS -20
352	S-BAND DFBS -20
353	S-BAND DFBS -20
354	S-BAND DFBS -20
355	S-BAND DFBS -20
356	S-BAND DFBS -20
357	S-BAND DFBS -20
358	S-BAND DFBS -20
359	S-BAND DFBS -20
360	S-BAND DFBS -20
361	S-BAND DFBS -20
362	S-BAND DFBS -20
363	S-BAND DFBS -20
364	S-BAND DFBS -20
365	S-BAND DFBS -20
366	S-BAND DFBS -20
367	S-BAND DFBS -20

Sys No	Description
368	S-BAND DFBS -20
369	S-BAND DFBS -20
370	S-BAND DFBS -20
371	S-BAND DFBS -20
372	S-BAND DFBS -20
373	S-BAND DFBS -20
374	S-BAND DFBS -20
375	S-BAND DFBS -20
376	S-BAND DFBS -20
377	S-BAND DFBS -20
378	S-BAND DFBS -20
379	S-BAND DFBS -20
380	S-BAND DFBS -20
381	S-BAND DFBS -20
382	S-BAND DFBS -20
383	S-BAND DFBS -20
384	S-BAND DFBS -20
385	S-BAND DFBS -20
386	S-BAND DFBS -20
387	C6000 EMULATOR/
388	C6000 CODE COMP
389	EVALUATION MODU
391	S-BAND DFBS -2
392	S-BAND DFBS -2
393	S-BAND DFBS -24
394	S-BAND DFBS -24
395	S-BAND DFBS -24
396	S-BAND DFBS -24
397	S-BAND DFBS -24
398	S-BAND DFBS -24
399	S-BAND DFBS -24
400	S-BAND DFBS -24
401	S-BAND DFBS -24
402	S-BAND DFBS -24
403	S-BAND DFBS -24
404	S-BAND DFBS -24
405	S-BAND DFBS -24
406	S-BAND DFBS -24
407	S-BAND DFBS -24
408	S-BAND DFBS -24
409	S-BAND DFBS -24
410	S-BAND DFBS -24
411	S-BAND DFBS -24

Sys No	Description
412	S-BAND DFBS -24
413	S-BAND DFBS -24
414	S-BAND DFBS -24
415	S-BAND DFBS -24
416	S-BAND DFBS -24
428	PASSIVE PROBES
429	OSCILLOSCOPE-4 C
430	PULSEGENERATOR
431	PULSEGENERATOR
432	ATTENUATOR 11DB
433	UNIVERSAL COUNT
434	FUNCTION GENERA
439	GD99902 AGC AMPL
441	8162A TUNABLE LA
444	8100KI CONNECTO
446	33250A 80 MHZ FUN
448	DA 1855A 2 CH. 100
449	DXC100A 100:1/10:1
453	FFP-TF1575-025G20
454	FFP-TF1575-025G20
465	1198AR GENERAL P
467	X-192DAA EVALUAT
478	MU250000A COLOR
480	TEST EQUIPMENT:
492	25-GHZ PHOTODET
493	ANRITSU ERROR R
494	TB92269+21SU1 TU
495	1198A O/E 1200 NM-
501	ACOUSTO-OPTIC M
502	ACOUSTO-OPTIC M
503	12-PS PHOTODECT
504	12-PS PHOTODECT
577	21027-1DS
578	21027-1DS
579	21027-1DS
580	26027-2-1.55-FO-1S
581	26027-2-1.55-FO-1S
582	26027-2-1.55-FO-1S
583	MITEQ RF AMPLIER
584	MITEQ RF AMPLIER
587	SMARTBITS ETHER
588	MODEL 3CN00410M
589	MODEL 3CN00410P

Sys No	Description
590	MODEL 3CN00410Q
591	MODEL 3CN00410R
592	MODEL 3CN00410R
593	MODEL 3CN00410R
594	MODEL 3CN00410S
595	MODEL 3CN00410S
596	MODEL 3CN00410S
597	MODEL 3CN00410T
598	MODEL 3CN00410U
599	MODEL 3CN00410U
600	MODEL 3CN00410U
601	MODEL 3CN00410U
602	MODEL 3CN00410U
603	MODEL 3CN00410V
604	MODEL 3CN00410V
605	MODEL 3CN00410V
606	MODEL 3CN00410V
608	HP 81101A PULSE G
609	MODEL SP3K-80 4 P
610	MODEL 3CN00410Q
611	AGILENT 6675A DC
612	MODEL 744 BUTTER
628	8164AR: REFURBIS
631	TB92269+21SU1 TU
632	NLK1556STB 20MW
633	NLK1556STB 20MW
634	NLK1556STB 20MW
635	NLK1656STB 20MW
636	NLK1656STB 20MW
637	NLK1656STB 20MW
638	NLK1656STB 20MW
639	NLK1656STB 20MW
640	NKL1556STB 20MW
641	NKL1556STB 20MW
642	NKL1556STB 20MW
643	NKL1556STB 20MW
644	NKL1556STB 20MW
645	NKL1556STB 20MW
646	NKL1556STB 20MW
647	NKL1556STB 20MW
648	NLK1556STB 20MW
649	NLK1556STB 20MW
663	D18-05547-02 ORDE

Sys No	Description
664	10 GB/S MODULATO
665	10 GB/S MODULATO
844	05SI50005 CUSTOM
846	MODEL 3CN00410 2
847	MODEL 3CN00410 2
848	MODEL 3CN00410R
849	16700B W/OPTION 3
850	E5346A 38-PIN PRO
851	MODEL 3CN00410 2
852	MODEL 3CN00410 2
853	MODEL 3CN00410 2
854	MODEL 3CN00410 2
855	MODEL 3CN00410 2
856	MODEL 3CN00410 2
857	MODEL 3CN00410 2
858	CINCINNATI SUB-ZE
859	CINCINNATI SUB-ZE
881	16717A 2M 333MHZ
882	16717A 2M 333MHZ
890	P/N 107986804: CAS
897	P/N AQ8201-418: 1X
898	P/N AQ8201-418: 1X
900	LAN-3100A 10/100B
903	FSP30 SPECTRUM A
904	P/N AQ8203:HALF S
905	TMDS 3P701014 C6
906	TEKTRONIX TDS305
907	FSP3 SPECTRUM A
909	80C01 OPTICAL MO
910	800000 SAMPLING M
911	TEKTRONIX TDS305
912	METRO RACK 2424B
913	METRO 24 X 72 SHE
935	AQ6140 MULTIWAV
938	0GS236 GS FRAME
942	0GS236 GS FRAME
944	AQ8203 HALF SIZE
946	AQ6317B OPTICAL S
948	MODEL 3CN00410 2
949	MODEL 3CN00410 2
950	MODEL 3CN00410 2
951	MODEL 3CN00410 2
952	MODEL 3CN00410 2

Sys No	Description
953	MODEL 3CN00410 2
954	MODEL 3CN00410 2
955	MODEL 3CN00410 2
956	MODEL 3CN00410 2
957	MODEL 3CN00410 2
958	MODEL 3CN00410 2
959	MODEL 3CN00411 2
979	800000 SAMPLING M
981	2FT. - FC/APC TO LC
984	LAB TEST CONFIGU
986	AT-E3634A POWER
987	AQ8203 HALF SIZE
988	763061-005 (X2 GPIB
989	OPTICAL GRATING
993	AQ6317B OPTICAL S
994	P/N 10071-XTR FSU
1001	ATTENUATOR MOD
1002	DISPLAY CONTROL
1003	OPM MODULE MOD
1011	MTC5589 CLOCK &
1086	AQ8201-855 3X SP
1087	AQ8201-891 3X SP
1088	MODEL G0004 CLOC
1089	MODEL G0014-AC A
1090	MODEL G0030-1322
1091	80C09 OPTICAL MO
1093	MTC5589 CLOCK &
1097	CSA8000 COMMUN
1099	AQ6140 MULTI-WA
1104	CSA8000B 1R RAC
1105	80C09 OPTICAL MO
1106	CIF24-05M DELUX
1107	BWC-SLD-10 BROA
1108	CSA8000 COMMUN
1112	53131A FREQUENC
1113	54621A OSCILLOSC
1114	AGILENT 81635A QU
1115	FC/APC 4 METER P
1116	QOUTE#:1-5AY90
1117	AGILENT 8164AR RM
1118	MODEL G0074-0L1S
1119	PE3+1FA PMD EMU
1121	ORDER NUMBER 0

Sys No	Description
1124	# PS-700-0-FC-APC
1146	FV-400 MICROSCO
1164	BUD POS-194-S POW
1165	QOUTE: X020327A
1176	80C01CR OPTICAL
1177	CSA8000 MAINFRAM
1184	CUSTOM PRESS FO
1185	800000 DUAL 20GHZ
1186	EYBS-3026 BROADB
1196	LAB EQUIPMENT. JD
1730	S100FO TRAVERSE
1211	LAB EQUIPMENT: A
1214	MODEL 81635AR 2-C
1216	81635A OPTICAL P
1217	8164A MAINFRAM
1222	INFINIPORT 2.5G 13
1223	INFINIPORT MAINFR
1225	LAN-3100A 10/100 B
1228	MODEL 81482B TUN
1229	LAB EQUIPMENT: A
1236	DANTEL ORDERWIR
1239	AQ8201A MAINFRAM
1240	10G PBS GENERAT
1241	P/N JFALASMG2.6
1242	P/N 33A-181-120L00
1243	LAB EQUIPMENT: P
1244	P/N 500-5341BE SIN
1245	P/N MPC-1-FC-APC
1248	OC48 ML GENERAT
1249	MODEL # MPC-1-FC
1250	MODEL # MPC-1-FC
1252	MODEL # MPC-1-FC
1253	MODEL # MPC-1-FC
1254	REF. QUOTE 61402
1256	LEAD FORM TOOL S
1261	WAVESPLITTER PN
1262	AT-35670A/1C2/1D0
1274	LAB EQUIPMENT: A
1275	LAB EQUIPMENT: A
1319	P/N JFAFA1.6SM1M
1320	ADVANCED NETWO
1321	STM-16 OC48 OPTIC
1322	OC-48/STM-16 ERRO

Sys No	Description
1324	OC48 ML GENERAT
1327	E504SU2200R3X106
1329	WAVESPLITTER PN
1336	WAVESPLITTER PN
1337	P/N 202011-000 REV
1338	AQ8201-03 MAINFR
1339	PART NUMBER 1AP
1341	PN: S012740 CT-20-
1342	TEKTRONIX TDS305
1343	MODEL DCS80-13E
1344	MODEL DCS80-13E
1345	MODEL DCS80-13E
1346	MODEL DCS80-13E
1347	MODEL DCS80-13E
1348	MODEL DCS80-13E
1349	MODEL DCS80-13E
1350	MODEL DCS80-13E
1351	DLM80-7.5M9G-0-80
1352	DLM80-7.5M9G-0-80
1353	DLM80-7.5M9G-0-80
1354	DLM80-7.5M9G-0-80
1355	DLM80-7.5M9G-0-80
1356	DLM80-7.5M9G-0-80
1357	DLM80-7.5M9G-0-80
1358	PART # MPC-1-FC-A
1359	PART # MPC-1-FC-A
1365	DLM80-7.5M9G-0-80
1366	DLM80-7.5M9G-0-80
1367	DLM80-7.5M9G-0-80
1402	50 PIN HEADERS IN
1404	JITTER/WANDER PA
1405	3070/91.01OSA-160
1406	TUNABLE SWEPT W
1407	MODEL AQ8203 HAL
1416	AQ8201-31 VARIABL
1417	AQ8201-31 VARIABL
1420	TESTEQUITY MODE
1421	(REF. QUOTE X0208
1422	PART NO. IAH07-8 S
1426	PART NO. AQ8201-3
1427	PART NO. AQ8201-3
1428	PART NO. AQ8201-3
1436	Polarization Controlle

Sys No	Description
1437	Oscilloscope w/ Optio
1732	Stock Bench; Electric
1438	DBF Fiber Coupled L
1439	10202A-50-FC Dual
1447	10W CW D
1448	GZ6 Stereo Micro Std
1449	MT3/M Metric XYZ Tr
1450	SoundStation EX Bas
1453	MDT693 3 Axis Piezo
1455	Polarimeter 450-700n
1456	Variable Waveplate V
1457	MDT693 3 Axis Piezo
1459	PA430H IR Polarimet
1460	5X Beam Masks
1461	Fieldmaster Power M
1478	PART # MPC-1-FC-A
1483	PART NO. FLD5F6C
1484	MODEL NO. OAB155
1485	KIKUSUI MODEL TO
1486	PART NO. MTC5589
1489	PART NO. CR5500+
1490	PART NO. BLS-C-23
1494	DCS80-13EM9C PRO
1495	DLM80-7.5M9G PRO
1498	STK-2010A SMB-200
1504	MPC1-FC-APC-R RA
1505	MPC1-FC-APC-R RA
1506	PART NO. BAPLX-19
1508	PART NO. 563-C-144
1510	PART NO. IAP3WC-1
1511	DCS80-13EM9C PRO
1512	AQ8201-02 DISPLAY
1515	E3634A POWER SU
1516	PART NO. MPC1-1-F
1517	PART NO. MPC1-1-F
1518	PART NO. MPC1-1-F
1519	PART NO. BTA10-PX
1520	DRFH3-19-30 DRAW
1528	33A-33A-120L001 PA
1529	STANDOFF S-ZN 0.2
1530	33A-000-100L002 PI
1533	PART NUMBER SWF
1534	3060/36ADVANCED

Sys No	Description
1535	10.7GB/S O TO E CO
1540	MPC1-FC-APC-R RA
1541	MPC1-FC-APC-R RA
1542	10.7GB/S CDR
1543	PART NO. MTC5589
1547	NORTEL/CORETEK
1548	MATERIALS AND LA
1581	KMS-BC-1204; BURN
1582	PN EYBS3527: ASE
1589	INJECTION MOLD T
1591	SLP4-6D SC OPTICA
1624	TDS8200; DIGITAL S
1626	SPIRENT ADTECH A
1629	MAN. PART NUMBE
1635	XLP CHASSIS & GPS
1636	MAN. PART NUMBE
1643	PART NUMBER: FBP
1644	MAN. PART NUMBE
1645	MAN. PART NUMBE
1658	80C07B/CR1/F8/NC
1667	PART NUMBER: BP1
1669	MAN. PART NUMBE
1670	PART NUMBER: BP1
1671	PART NUMBER: BP1
1672	PART NUMBER: BP1
1673	403520; OC48 ML PO
1674	80C07B; OC48 OPTI
1675	TDS8200; DIGITAL S
1676	80C08C; 10G OPTIC
1683	400151; XL MF & GP
1684	400151; XL MF & GP
1685	PART NUMBER: 531
1688	PART NUMBER: 403
1689	PART NUMBER: E36
1695	AP015 30 AMPS 50M

Sys No	Description
1696	EXPENSE REPORT
2956	160-6001-990 -5
2957	333-0021-001 -16
2955	333-0014-101 -2
1831	LH improvements - 50
2998	Al's Plumbing re 2015
3000	Lawton re Remodel 2
3005	Replace/Add Power t
3006	Replace 2 RTU's Add
3223	Bill Joplin
3247	New Asset for Leaseh
3248	New Asset for Leaseh
3251	Bathroom Remodel O
302	MATERIALS/HARDW
	MATERIALS/HARDW
303	INTERIOR PLANNIN
	INTERIOR PLANNIN
304	INTERIOR PLANNIN
	INTERIOR PLANNIN
305	INTERIOR PLANNIN
	INTERIOR PLANNIN
311	CABLE WIRING
	CABLE WIRING
313	CABLE WIRE & 32 P
314	16 PORT DIGITAL S
	16 PORT DIGITAL S
315	PBX EXPANSION W
	PBX EXPANSION W
316	VOICE & DATA CAB
	VOICE &DATA CAB
318	CONTRACT MGMT O
	CONTRACT MGMT O
319	MOHR PARTNERS I
	MOHR PARTNERS I
320	MOHR PARTNERS I

Sys No	Description
	MOHR PARTNERS I
424	DESIGN SERVICES
	DESIGNSERVICES
671	Finish Out of Building
	Finish Out of Building
672	Finish Out of Building
	FinishOut of Building
673	Finish Out of Building
	FinishOut of Building
889	BELDEN DATA TWIS
	BELDEN DATA TWIS
891	110 VOLT-20 AMP D
	110 VOL T-20 AMP D
1143	ONE 3 TON ROOFTO
	ONE 3 TON ROOFTO
1234	CONSTRUCTION OF
	CONSTRUCTION OF
1235	EXPANSION OF SIN
	EXPANSION OF SIN
1259	INSTALL TEST AND
	INSTALL TEST AND
1410	NEW 100 AMP CIRC
	NEW 100 AMP CIRC
1480	ELECTRICAL REQU
	ELECTRICAL REQU
1552	TAKE DOWN 7 EXIT
	TAKE DOWN 7 EXIT
1553	INSTALLATION OF 4
	INSTALLATION OF 4
1564	INSTALLATION FEE
	INSTALLATION FEE

**Section 2.3(a)(i) – Accounts Payable**

None.



**Section 2.3(a)(ii) – Other Obligations, Liabilities, and Commitments**

None.

Section 4(d) – Financial Statements; Absence of Undisclosed Liabilities<sup>2</sup>

Nera Communications, Inc. Commons Consolidated For the Twelve Months Ending September 30, 2016																																
	XCI	XEU	XEU	XEU	XEU	XEU	XCH	XCH	XCH	XCH	XCH	MCN	MCN	MCN	MCN	MNI	XBR	XBR	XBR	XBR	XBR	XCN	XCN	XCN	XCN	HP	EOP	XTERA				
	USD	GBP	GBP	USD	USD	USD	CNY	CNY	USD	USD	USD	CAD	CAD	USD	USD	USD	BRL	BRL	USD	USD	USD	CAD	CAD	USD	USD	USD	USD	TOTAL				
<b>Assets</b>																																
<b>Current Assets</b>																																
Cash and Cash Equivalents	\$99,284.79	\$80,363.39		\$104,536.70		\$104,536.70											\$100,295.61		\$31,121.73		\$31,121.73	\$5,997.48		\$4,275.36		\$4,275.36		239,218.57				
Restricted Cash - Current																												0.00				
Accounts and Unbilled Receivable	4,073,807.77	177,754.07		231,222.49		231,222.49											334,087.09		103,667.22		103,667.22	90,031.57		68,766.11		68,766.11	(16,176,539.68)	4,477,463.60				
Intercompany AR	157,36,169.07																											0.00				
Inventory	12,161,662.85	6,314.86		8,214.37		8,214.37																						12,169,279.99				
Deferred Cost	2,438,208.47																											2,438,208.47				
Other Current Asset	255,041.61																											255,041.61				
Prepaid Exp and Other	515,795.89	103,485.79		134,614.32		134,614.32											21,787.27		6,780.59		6,780.59							667,130.00				
<b>Total Current Assets</b>	<b>36,279,370.42</b>	<b>367,918.11</b>		<b>478,587.88</b>		<b>478,587.88</b>	<b>0.00</b>	<b>0.00</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>456,169.97</b>		<b>141,549.54</b>		<b>141,549.54</b>	<b>672,181.31</b>		<b>513,412.08</b>		<b>513,412.08</b>	<b>0.00</b>	<b>(16,176,539.68)</b>	<b>20,236,389.25</b>			
Property and Equipment	26,251,771.28	3,284,763.62		4,272,830.52		4,272,830.52																						30,534,591.80				
Accum Depreciation	(22,875,415.19)	(3,120,761.36)		(4,089,486.38)		(4,089,486.38)																						(26,914,901.57)				
<b>Net Fixed Assets</b>	<b>3,376,356.09</b>	<b>164,002.26</b>		<b>213,344.14</b>		<b>213,344.14</b>	<b>0.00</b>	<b>0.00</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>											<b>0.00</b>	<b>3,589,692.23</b>			
Restricted Cash - LT	176,094.62	2,704,772.06		3,518,167.50		3,518,167.50																							3,694,462.12			
Goodwill																													0.00			
Investment in Sub	6,187,687.22																												6,187,687.22			
Intangible Assets, Net	6,474,783.39																					1,636.75		1,250.15		1,250.15		6,474,783.39				
Other Long Term Assets	81,151.00	6,788.00		8,829.83		8,829.83																						89,808.83				
<b>Total Assets</b>	<b>51,575,442.74</b>	<b>3,243,480.43</b>		<b>4,219,119.34</b>		<b>4,219,119.34</b>	<b>0.00</b>	<b>0.00</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>456,169.97</b>		<b>141,549.54</b>		<b>141,549.54</b>	<b>673,818.06</b>		<b>514,662.23</b>		<b>514,662.23</b>	<b>0.00</b>	<b>(22,365,476.90)</b>	<b>34,085,296.94</b>			
<b>Liabilities and Equity</b>																																
<b>Current Liabilities</b>																																
Current Portion LTD																													0.00			
Line of Credit	8,099,610.46																												8,099,610.46			
Shareholder Loans	1,200,000.00																												1,200,000.00			
Accounts Payable	27,063,316.13	304,719.78		396,379.49		396,379.49											81,940.88		25,432.46		25,432.46	2,649.88		2,023.98		2,023.98		27,467,151.96				
Intercompany Payable	30,197.13	10,851,179.17		14,115,213.86		14,115,213.86											998,220.00		281,820.67		281,820.67	516,052.20		394,160.67		394,160.67	(14,821,392.33)	0.00				
Accrued Comp and Benefit	679,903.35	196,460.95		255,556.40		255,556.40																							990,808.04			
Deferred Revenue	2,267,367.22	323,077.31		420,206.93		420,206.93																							2,690,594.15			
Warranty Reserve	1,954,742.69	441,288.33		576,629.46		576,629.46																							2,531,372.15			
Other Accrued Liab	12,253,580.20	2,766,218.60		3,988,297.15		3,988,297.15																							15,877,077.41			
<b>Total Current Liabilities</b>	<b>53,598,427.18</b>	<b>14,884,904.14</b>		<b>19,362,283.31</b>		<b>19,362,283.31</b>	<b>0.00</b>	<b>0.00</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>990,180.88</b>		<b>307,253.13</b>		<b>307,253.13</b>	<b>572,195.58</b>		<b>437,042.98</b>		<b>437,042.98</b>	<b>0.00</b>	<b>(14,821,392.33)</b>	<b>58,793,614.27</b>			
Long Term Debt	3,905,037.58																												3,905,037.58			
Debt Discount																													0.00			
Other Long Term Liab	646,657.24																												646,657.24			
<b>Total Liabilities</b>	<b>58,060,122.00</b>	<b>14,884,904.14</b>		<b>19,362,283.31</b>		<b>19,362,283.31</b>	<b>0.00</b>	<b>0.00</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>990,180.88</b>		<b>307,253.13</b>		<b>307,253.13</b>	<b>572,195.58</b>		<b>437,042.98</b>		<b>437,042.98</b>	<b>0.00</b>	<b>(14,821,392.33)</b>	<b>63,345,309.99</b>			
<b>Equity</b>																																
Preferred Stock A																													0.00			
Preferred Stock B																													0.00			
Preferred Stock C																													0.00			
Preferred Stock D																													0.00			
Preferred Stock E																													0.00			
APIC	410,512,823.21			30,631,689.45		30,631,689.45		6,153,380.07									3,682.02		3,682.02		1,714.74								410,512,823.21			
Common Stock	17,229.53			5,109.00		5,109.00		10,782.28									90,000.00		90,000.00		32,282.26								(33,363.50)			
RE - Prior Year	(308,579,117.95)			(36,985,666.14)		(36,985,666.14)		(15,979,474.58)									(333,359.45)		(333,359.45)		(105,629.37)								(129,004.99)			
RE - Current Year	(84,535,609.07)			(5,292,556.02)		(5,292,556.02)		(7,545,028.12)									(254,333.48)		(254,333.48)		(66,046.18)								(57,242,895.42)			
Translation Adjustment								2,171,462.47													(19,028.08)								(10,841)			
<b>Total Equity</b>	<b>(6,484,679.28)</b>	<b>0.00</b>		<b>(11,641,423.71)</b>		<b>(11,641,423.71)</b>	<b>(15,143,163.96)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(534,010.91)</b>		<b>(534,010.91)</b>	<b>(165,703.59)</b>		<b>0.00</b>	<b>101,622.48</b>		<b>126,750.55</b>	<b>77,619.25</b>	<b>(7,544,084.57)</b>	<b>(29,260,012.14)</b>			
<b>Total Liabilities and Equity</b>	<b>51,575,442.74</b>	<b>14,884,904.14</b>		<b>(11,641,423.71)</b>		<b>(11,641,423.71)</b>	<b>4,219,119.34</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>990,180.88</b>		<b>(534,010.91)</b>		<b>(534,010.91)</b>	<b>141,549.54</b>		<b>572,195.58</b>		<b>101,622.48</b>	<b>437,042.98</b>	<b>126,750.55</b>	<b>514,662.24</b>	<b>0.00</b>	<b>(22,365,476.90)</b>	<b>34,085,296.94</b>
BS Translation Impact	0.02		0.00			0.00		0.00																					0.00			
IS Translation Impact:																																
October IS	(1,573,178.02)		(101,046.22)		(154,204.45)		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(5,689.72)		(1,397.23)		(1,397.23)		(38,387.99)		(29,920.54)		11,270.63	(1,746,439.61)	Agrees to IS			
November IS	(1,451,382.21)		(462,690.09)		(702,990.09)		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(5,989.72)		(1,442.07)		(1,442.07)		(13,701.76)		10,335.54		3,501.82	(2				

**Section 4(h) – Material Contracts**

- Subcontract for Marine Route Survey and Related Works for Gulf to Africa (G2A) Project between Xtera Communications Inc. and E-Marine Point Joint Stock Company
- Addendum No. 01 to Subcontract for Marine Route Survey and Related Works for Gulf to Africa (G2A) Project between Xtera Communications Inc. and E-Marine Point Joint Stock Company dated as of 29 February 2016
- Subcontract for Marine Installation Works for the Gulf to Africa (G2A) Project by and between Global Marine Systems Limited and Xtera Communications Inc.
- Master Manufacturing Agreement dated as of January 1, 2013 between Xtera Communications Inc. and NSG Technology, Inc.
- Extension to the Master Manufacturing Agreement dated as of January 1, 2016 between Xtera Communications Inc. and NSG Technology, Inc.
- Master Manufacturing Agreement entered into as of May 6, 2016 by and between Xtera Communicatinos Inc. and STI Enterprises PLC
- General Framework Agreement between Cinia Cloud OY and Xtera Communications, Inc. dated October 28, 2015.
- Contract between C&W Bermuda Limited and C&W (BVI) Limited and Xtera Communications, Inc. dated January 12, 2009.
- Contract Variation No. 1 dated July 26, 2010 to Contract between C&W (EWC) Limited and Xtera Communications Limited dated June 30, 2010.
- Contract between C&W (EWC) Limited and Xtera Communications, Limited dated June 30, 2010.
- Agreement between C&W Bermuda Ltd. and Azea Networks Limited dated May 22, 2007.
- Supply Contract between C&W Bermuda Ltd. and Azea Networks Ltd. dated May 22, 2007.
- Agreement between C&W Bermuda Ltd. and Azea Networks Ltd. dated May 22, 2007.
- Contract Variation No. 1 dated September 19, 2007 to the Contract for the Gemini Bermuda Cable System between C&W Bermuda Ltd. and Azea Networks Ltd on May 22, 2007.
- Contract Variation No. 2 dated October 30, 2007 to the Contract for the Gemini Bermuda Cable System between C&W Bermuda Ltd. and Azea Networks Ltd on May 22, 2007.
- Purchase Order dated June 21, 2016 from Xtera Communications, Inc. to C&W, Inc. for EWC 100G Upgrade.
- Purchase Order dated June 21, 2016 from Xtera Communications, Inc. to C&W, Inc. for ECFS 200G Upgrade.
- Contract Variation #1 to the ECFS DWDM Upgrade Supply Contract between C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
- Contract Variation #2 to the ECFS DWDM Upgrade Supply Contract between Antelecom NV, C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
- Contract Variation #3 to the ECFS DWDM Upgrade Supply Contract between Antelecom NV, C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera Communications, Inc.
- Network Maintenance and Support Service Contract for C&W UK dated June 26, 2007.
- Support Service Contract for C&W UK dated December 1, 2009.

- Supply Agreement between C&W (Cayman Islands) Limited, C&W Jamaica Limited, and Xtera Communications, Inc. dated May 16, 2012.
- Supply Contract among C&W (Anguilla), C&W Antigua & Barbuda, C&W (Barbados), C&W (BVI), C&W Dominica, C&W Grenada, C&W St. Kitts & Nevis, C&W (St. Lucia), C&W St. Vincent and the Grenadines, and Telecommunications Services of Trinidad & Tobago and Xtera relating to the Supply and Installation of the ECFS DWDM Upgrade
- G2A Submarine Cable System General Terms and Conditions of Contract – Part 1 between Oman Telecommunications Company S.A.O.G., Telesom Company, Golis telecommunications Company, and Xtera Communications, Inc. dated October 2015.
- G2A Cable System Technical Requirements – Part 3 dated October 2015
- G2A Cable System Equipment Price breakdown – Contract dated October 2015
- G2A Submarine Cable System Plan of Work – Part 4 dated October 2015
- G2A Submarine Cable System Billing Milestone and Payment Schedule – Part 5 dated October 2015
- Master Professional Services Agreement between Xtera Communications, Inc. and Brasil Telecom of America, Inc./GlobeNet dated June 30, 2010.
- Contract Variation 1 between Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., Brasil Telecom de Venezuela, S.A. and Xtera Communications, Inc. dated January 26, 2009.
- Upgrade Contract between Brasil Telecom of America, Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., Brasil Telecom de Venezuela, S.A. and Xtera Communications, Inc. dated November 26, 2008.
- Master Professional Services Agreement between Xtera Communications, Inc. and Brasil Telecom of America, Inc./Globenet dated June 30, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc. and Brasil Telecom Subsea Cable Systems (Bermuda), Ltd. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom Subsea Cable Systems (Bermuda), Ltd., and Xtera Communications, Inc. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom Cabos Submarinos Ltda, and Xtera Communications, Inc. dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom Cabos Submarinos Ltda. Dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom of America, Inc. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom of America, Inc., and Xtera Communications, Inc. dated September 3, 2010.
- Contract Amendment No. 1 dated October 22, 2010 amending Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom de Venezuela, S.A. dated September 3, 2010.
- Upgrade Contract between Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated September 3, 2010.
- Contract Variation No. 5 dated June 2012 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
- Contract Variation No. 6 dated October 1, 2012 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil

- Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
- Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., Brasil Telecom Subsea Cable Systems (Bermuda) Ltd., Brasil Telecom Cabos Submarinos Ltda., and Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom Cabos Submarinos Ltda., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom of America Inc., and Xtera Communications, Inc. dated June 30, 2011.
  - Contract Variation No. 7 dated January 29, 2013 for the Upgrade Contract between Brasil Telecom de Venezuela, S.A., and Xtera Communications, Inc. dated June 30, 2011.
  - Master Professional Services Agreement between Xtera Communications, Inc., and Brasil Telecom of America, Inc./GlobeNet dated September 4, 2013.
  - Amendment No. 1 to the Supply Agreement dated March 31, 2016 made as of March 31, 2016 by Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., and GlobeNet Cabos Submarinos America, Inc.
  - Contract Variation No. 1 which modifies the March 31, 2016 Upgrade Order between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc. and the March 31, 2016 Supply Agreement and is among Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., and GlobeNet Cabos Submarinos America, Inc.
  - Contract Variation No. 2 among Xtera Communications, Inc., Xtera Comunicacoes Do Brasil Ltda., GlobeNet Cabos Submarinos S.A., Globenet Cabos Submarinos Bermuda Ltd., and GlobeNet Cabos Submarinos America, Inc. modifying all four March 31, 2016 Upgrade Orders and the march 31, 2016 Supply Agreement between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos America, Inc. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos Bermuda Ltd. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos Bermuda Ltd. on behalf of Globenet Cabos Submarinos Vzla, S.A. and Xtera Communications, Inc.
  - Upgrade Order dated March 31, 2016 to the Supply Agreement dated March 31, 2016 between Globenet Cabos Submarinos S.A. and Xtera Communications, Inc.
  - Supply Agreement between GlobeNet Cabos Submarinos America, Inc., GlobeNet Cabos Submarinos S.A., and Xtera Communications Inc. dated March 31, 2016.
  - Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. dated December 3, 2014.
  - Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
  - Reseller Agreement between Xtera Communications Inc. and GlobeNet Cabos Submarinos America Inc. dated September 2014.

- Amended and Restated Amendment 9 between GlobeNet Cabos Submarinos Bermuda Ltd. and Xtera Communications, Inc. dated December 2, 2014 to the Upgrade Contract dated June 30, 2011.
- Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos America, Inc. and Xtera Communications, Inc. dated December 3, 2014.
- Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Bermuda Ltd. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
- Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos S.A. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
- Amendment 10 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Bermuda Ltd. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
- Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos S.A., Inc. and Xtera Communications, Inc. dated December 3, 2014.
- Amendment 10 to the Upgrade Contract dated June 30, 2011 between GlobeNet Cabos Submarinos VZLA, S.A. and Xtera Communications, Inc. dated December 3, 2014.
- Amendment 11 dated April 8, 2015 amending Amendment 9 and Amendment 10 between GlobeNet Cabos Submarinos VZLA, S.A. and Xtera Communications, Inc. to the Upgrade Contract dated June 30, 2011.
- Contract Amendment No. 4 dated June 12, 2012 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom of America, Inc. dated June 30, 2011.
- Contract Amendment No. 4 dated June 12, 2012 amending the Contract for the Upgrade of Telecommunications Systems by Xtera Communications, Inc., and Brasil Telecom de Venezuela, S.A. dated June 30, 2011.
- Agreement dated as of 1 April 2016 between Xtera Communications Inc. and EGS (Asia) Ltd. for Cable Route Study for SRG-1 Cable System<sup>3</sup>
- Letter of Bernard Logan, Chief Commercial Officer, Main One Cable dated as of 27 July 2015 Re: Xtera Upgrade of Main One Instruction to Proceed
- Contract Variation No. 12 dated January 1, 2012 between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. to the Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract
- Contract Variation No. 14 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc.
- Contract Variation No. 15 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated August 25, 2015
- Contract Variation No. 16 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated December 18, 2015.

<sup>3</sup> On October 10, 2016, SRG sent the Notice of Default and Request to Cure Contract Silk Route Gateway – 1 SRG-1 Submarine Cable System notifying Seller of its right to terminate the Agreement dated as of 1 April 2016 between Xtera Communicatinos Inc. and EGS (Asia) Ltd. for Cable Route Study for SRG-1 Cable System if Seller did not cure alleged defaults under the Agreement within 30 days.

- Contract Variation No. 18 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 30, 2016.
- Contract Variation No. 1 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
- Contract Variation No. 10 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated April 29, 2010.
- Contract Variation No. 11 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated April 29, 2010.
- Contract Variation No. 13 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 29, 2012.
- Contract Variation No. 17 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated October 1, 2015.
- Contract Variation No. 3 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
- Contract Variation No. 5 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
- Contract Variation No. 7 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated November 30, 2009.
- Contract Variation No. 9 to the June 30, 2009 Americas 1 North/Columbus 2 Segment B Upgrade No. 1 Supply Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated January 25, 2010.
- Certificate of Provisional Acceptance of Americas-1 North/Columbus-2 Segment-B Upgrade No. 1 dated December 29, 2009.
- Americas-1 North/Columbus-2 Segment-B (DWA) Contract between Antelecom N.V., AT&T Corp., MCI International, Inc., Servicio di Telecomunicacion di Aruba N.V. and Telepuerto San Isidro S.A. and Xtera Communications, Inc. dated June 12, 2009.
- Columbus III Submarine Cable System Upgrade Contract between AT&T Corp., PT Comunicações, S.A., MCI International, Inc., Tata Communications (Bermuda) Limited, Telkom SA Limited, and Xtera Communications, Inc. dated March 2, 2009.
- Contract Variation No. 1 to the Columbus III Submarine Cable System Upgrade Supply Contract between AT&T Corp., PT Comunicações, S.A., MCI International, Inc., Tata

- Communications (Bermuda) Limited, Telkom SA Limited, and Xtera Communications, Inc. dated December 5, 2014.
- Certificate of Provisional Acceptance for GOKI between AT&T Corp., AT&T Global Communications Services Inc., AT&T Japan K.K., Xtera Communications, Inc., and Kokusai Cable Ship Co., Ltd. dated December 31, 2013.
  - GOKI Contract Variation No. CV-3 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated June 1, 2012.
  - GOKI Contract Variation No. CV-4 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated September 19, 2012.
  - GOKI Contract Variation No. CV-5 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated January 30, 2013.
  - GOKI Contract Variation No. CV-6 between AT&T Corp., AT&T Communications Services (Japan) Ltd., and Kokusai Cable Ship Co., Ltd. and Xtera Communications Inc. dated February 5, 2013.
  - GOKI Contract Variation No. CV-8 between AT&T Corp., AT&T Japan K.K., AT&T Global Communications Services Inc., and Xtera and Kokusai Cable Ship Co., Ltd. dated April 1, 2011.
  - GOKI Contract Variation No. CV-9 between AT&T Corp., AT&T Japan K.K., AT&T Global Communications Services Inc., and Xtera and Kokusai Cable Ship Co., Ltd. dated May 29, 2013.
  - GOKI Supply Contract between AT&T Corp., AT&T Communications Services (Japan) Ltd. and Xtera and Kokusai Cable Ship Co., Ltd. dated April 4, 2011.
  - GOKI Supply & Service Agreement between Xtera Communications, Inc. and KCS dated August 25, 2011.
  - TAT-12 Contract between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc.
  - TAT-12 Contract Variation No. CV-1 between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated September 30, 2014.
  - TAT-12 Contract Variation No. CV-2 between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated October 16, 2014.
  - TAT-12 Upgrade Certificate of Provisional Acceptance between AT&T Corp., AT&T Global Network Services (UK) B.V. and Xtera Communications, Inc. dated June 30, 2014.
  - Supply Contract for the ECFS DWDM Upgrade among C&W (Anguilla) Limited, C&W Antigua & Barbuda Limited, C&W (Barbados) Limited, C&W (BVI) Limited, C&W Dominica Limited, C&W Grenada Limited, C&W St. Kitts & Nevis Limited, C&W (St. Lucia) Limited, C&W St. Vincent and the Grenadines Limited, and Telecommunications Services of Trinidad and Tobago Limited and Xtera Communications, Inc. dated September 2012.
  - Standard Procurement Contract for Goods without Incidental Services between Xtera Communications, Inc. and Esso Australia Pty Ltd dated October 27, 2012.
  - SHEFA-2 Contract Schedule between Xtera Communications, Inc. and Faroese Telecom P/F dated January 15, 2007.
  - Supply Agreement for the Upgrade of the FA-1 Backhaul Network between Flag Telecom Group Limited and Xtera Communications, Inc. dated May 24, 2004.
  - GLOBENET
  - Meriton Networks End User License Agreement.
  - CAM Ring Upgrade Contract between PT Comunicações, S.A. and Azea Networks Ltd. dated December 27, 2007.



- Contract Variation No. 5 to the CAM Ring Upgrade Contract between Serviços de Comunicações e Multimédia, S.A. and Xtera Communications Ltd. dated September 30, 2015.
- Contract Variation No. 1 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated February 27, 2008.
- Contract Variation No. 2 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated February 15, 2011.
- Contract Variation No. 3 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated August 2, 2013.
- Contract Variation No. 4 to the CAM Ring Upgrade Contract between PT Comunicações, S.A. and Xtera Communications Ltd. dated September 20, 2013.
- Agreement for the 2010 Upgrade of C2C Cable Network between Xtera Communications Ltd. and Pacnet Cable Ltd., Pacnet Cable (HK) Limited, Pacnet Cable (Japan) Corp., Pacnet Cable (Korea) Ltd., Pacnet Cable (S) Pte. Ltd., Pacnet Cable (Taiwan) Ltd. dated March 26, 2010.
- Agreement for the Upgrade of C2C Cable Network between Azea Networks Ltd. and C2C Pte. Ltd., C2C (Hong Kong) Limited, C2C Japan K.K., C2C Cable Korea Ltd., C2C Singapore Pte. Ltd., C2C Infocomm Cable (Taiwan) Limited dated November 22, 2007.
- Hugo Cable System Segment 1 Upgrade Contract between Vodafone Limited and Xtera Communications, Inc. dated December 12, 2014
- Xteracare Support Agreement between Xtera Communications, Inc. and Vodafone Limited dated December 17, 2014.
- Flatiron Capital Premium Finance Agreement
- Loan and Security Agreement, dated January 16, 2015, by and among Seller, Azea Networks Inc., Neovus Inc., Xtera Asia Holdings, LLC and Square 1 Bank, as amended, supplemented or otherwise modified prior to the date hereof
- Venture Loan and Security Agreement between Xtera Communications Inc., as borrower, and Horizon Technology Finance Corporation, as lender, as amended, supplemented or otherwise modified prior to the date hereof
- Demand Note to Arch Venture Fund VI, L.P. dated as of September 27, 2016
- Warrant to Purchase Common Stock of Arch Venture Fund VI, L.P
- Demand Note to New Enterprise Associates 10, Limited Partnership dated as of September 27, 2016
- Warrant to Purchase Common Stock of New Enterprise Associates 10, Limited Partnership
- Demand Note to New Enterprise Associates 9, Limited Partnership dated as of September 27, 2016
- Warrant to Purchase Common Stock of New Enterprise Associates 9, Limited Partnership

**Section 4(k) – Proceedings**

Libra Industries, Inc. v. Xtera Communications, Inc., Case No. 2016-006377-2, County Court of Tarrant County, Texas

Flight Centre (UK) Limited v. Xtera Communications Ltd., Claim No. C6AA3R5P, County Court Business Centre

Sycamore IP Holdings LLC v. Xtera Communications, Inc., Case No. 2:15-cv-00335-JRG, United States District Court for the Eastern District of Texas, Marshall Division

Actel Networks Limited v. Xtera Communications, Inc., Index No. 653911/2012, Supreme Court of the States of New York, County of New York

*And the following demand letters.*

<b>Company</b>	<b>Collection Agency</b>	<b>Telephone Number</b>	<b>Address</b>	<b>Amount</b>
Avnet Electronics	Jonathan Neil & Associates, Inc.	800-331-6333	18321 Ventura Blvd., Ste. 1000, Tarzana, CA 91356	\$47,430.82
Avnet Electronics Marketing Group	Craig Luffy of Philip D. Collins & Associates (attorney)	469-453-4600	7557 Rambler Road, Ste. 930, Dallas, TX 75231	\$42,075.04
Mentor Graphics Corp	The Receivable Management Services Corporation (RMS)	800-666-6994	P.O. Box 361595, Columbus, OH 43236	\$1,929.15
Mentor Graphics Corp	NACM Northwest	971-230-1204	7931 NE Halsey, Ste. 103, Portland, OR 97213	\$1,908.52
Submarine Telecoms Forums	Prestige Services Inc.	402-493-4700	21214 Schofield Drive, Gretna, NE 68028	\$1908.75
Boston Applied Technologies	Stanley B. Kay (attorney)	617-928-3677	275 Grove Street, Ste. 2-400, Newton, MA 02466	\$105,000
Boston Applied Technologies	Altus Global Trade Solutions	303-416-7154	2400 Veterans Blvd., Ste. 300, Kenner, LA 70062	\$105,000
EXFO	Asset Collections Inc.	888-279-8601	10505 SW Barbur Blvd., Ste. 301, Portland, OR 97219	\$65,102
ULINE	Caine & Weiner	847-407-2320	1699 East Woodfield Road #360, Schaumburg, IL 60173	\$275.92
ReadyRefresh by Nestle	Caine & Weiner	847-407-2320	1699 East Woodfield Road #360, Schaumburg, IL 60173	\$338.35
Libra Industries, Inc.	Jennifer M. Himmelein of Cavich, Familio & Durkin (attorney)	216-621-7860	Twentieth floor, 1300 East Ninth Street, Cleveland, OH 44114	\$22,500
Oplink Communications, LLC	Joshua M. Wiersma of Molex, LLC (attorney for parent company, Molex, LLC)	630-969-4550	2222 Wellington Court, Lisle, IL 60532	\$270,946
Empower TN OY	Intrum Justitia	0844-	Intrum Justitia AB	\$181,534.10

		3750636 46(0) 8 546 102 00	Hesselmans torg 14 SE-105 24 Stockholm, Sweden	
E-marine	Clyde & Co LLP (law firm)	971-4-384- 4000	Rolex Tower, 15 <sup>th</sup> Floor, Sheikh Zayed Road, Dubai, UAE.	\$1,804,485

**Section 4(o)(i) – Seller Benefit Plans**

Each following material plan, arrangement, agreement or policy (whether contractual, customary or discretionary) relating to pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive, stock options, stock purchases, stock ownership, stock appreciation right, employment, compensation, deferred compensation, severance, salary continuation, termination, change-of-control, health, life, disability, group insurance, vacation, holiday, loans, fringe benefit or other employee benefit of Seller and/or Seller Affiliates:

Fidelity Automatic Rollover IRA Plan

Fidelity Investments Retirement Plan

Fidelity Investments Vokume Submitter Defined Contribution Plan (Profit Sharing 401(k) Plan), A Fidelity Volume Submitter Plan

Xtera Communications Inc. Individual Sales Commission Plan

Sales Incentive Plan

Xtera Communications Inc. Affirmative Action Plan

Cigna Dental Choice Benefit Plan

Cigna Life Plan

Cigna STD Plan

COBRA Chamers Inc. - Business Associate Agreement

Compass Health Plan

Xtera Communications Inc. Contractor Confidentiality, Non-disclosure and Invention Assignment Agreement

Xtera Communications Inc. EyeMed Vision Plan

Xtera Communications Inc. Flexible Spending Account Plan

Xtera Communications Inc. Buy Up Plan

Client Coverage Acknowledgment and Compensation Disclosure Statement for Xtera Communications Inc.

Xtera Communications Inc. Employee Welfare Benefit Plan

Xtera Communications Inc. Life Assistance Program

Xtera Communications Inc. Travel Entertainment and Expense Policy.

The Great-West Life Assurance Company Group Policy No. 277894 Life Plan

The Great-West Life Assurance Company Group Policy No. 277894 Long Term Disability Plan

The Great-West Life Assurance Company Group Policy No. 277894 Healthcare Plan

The Great-West Life Assurance Company Group Policy No. 277894 Medical Referral Services Plan

The Great-West Life Assurance Company Group Policy No. 277894 Critical Illness Plan

**Section 6.1 – Covenants Relating to the Conduct of the Business**

As of August 1, 2016, the Seller has operated as a company in financial distress. Certain invoices have not been paid and notices related thereto have been received.

**Section 6.2(a) – Business Employees****SALES & MARKETING**

#	First Name	Last Name	Location
1	Jorge	Becken	UK
2	Igor	Czajkowski	UK
3	Ricardo	Franco	Contractor
4	David (Tony)	Frisch	UK
5	Piero	Matrona	Contractor
6	Philippe	Perrier	US
7	Sean	Richardson	US
8	Wesley	Roberts	US
9	Lynsey	Thomas	UK
10	Massimo	Leo	Contractor

**FINANCE & ADMIN**

#	First Name	Last Name	Location
1	France	Manning	UK
2	Keith	Nicholls	UK
3	Sarita	Teitelbaum	US

**ENGINEERING**

#	First Name	Last Name	Location
1	Andy Sr.	Aitken	UK
2	David	Blake	UK
3	Do Il	Chang	US
4	Robert	Clark	UK
5	Steve	Desbruslais	UK
6	Sumudu	Edirisinghe	UK
7	Adrian	Edwards	UK
8	Paul	Farrugia	UK
9	Nahed	Hepden	UK
10	Alistair	Hill	UK
11	Maria	Ionescu	UK
12	Jeanne	James	UK
13	Grant	Kardos	UK
14	Datta	Krishnappa	US
15	John	McLaughlin	US
16	Alan	Olway	UK
17	David	Powell	UK
18	Vijay	Rudravajjala	US

19	Jeff	Stone	US
20	Dave	Trinler	US
21	Gerhard	vanLochem	UK
22	Michael	Williams	UK
23	Kevin	Willoughby	UK
24	David	Winterburn	UK
25	Ian	Wood	UK
26	Rolin	McKinlay	US

**EXECUTIVES**

#	First Name	Last Name	Location
1	Stuart	Barnes	UK
2	Keith	Henderson	US
3	Gary	Otake	US
4	Robert	Richardson	US

**CUSTOMER SERVICE**

#	First Name	Last Name	Location
1	Henry	Cowley	UK
2	Alan	Dismukes	US
3	Bill	McCutcheon	US
4	Tecno	Panyarath	US
5	Andy	Sturdy	UK
6	Han	Yongun	Contractor
7	Derek	Nguyen	US

**OPERATIONS**

#	First Name	Last Name	Location
1	Dylan	Higginbotham	US
2	Kim	Nguyen	US

**PROJECT MANAGEMENT**

#	First Name	Last Name	Location
1	Malcolm	Manning	UK
2	Gordon	Mathers	UK
3	Alan	Proudfoot	UK
4	Joerg	Schwartz	UK
5	Jane	Swaddle	UK
6	Richard	Dodd	Contractor

**SYSTEMS ENGINEERING**

#	First Name	Last Name	Location
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1	Andrew	Robinson	Canada
2	Nigel	Taylor	UK
3	Wai	Wong	UK

**OTHER**

1. Muhammad Salah Consultant

**Section 8.1(g) – Required Consents**

All consents required to assume and assign all Customer contracts.

All consents required to assume and assign all Transferred Leases.

All consents required to assume and assign all Contracts with the following vendors and suppliers:

M C Assembly  
Acacia Communications, Inc.  
Oakland Industries, LTD  
A-2-Sea Solutions Ltd  
Nexans  
STI  
Spellman High Voltage  
Global Marine Systems  
[STS]

All consents required to assume and assign any material license for intellectual property, including, without limitation, the License Agreement between Xtera Communications, Inc. and the Regents of the University of Michigan dated October 1, 2002, as amended.

**Section 8.1(h) – Key Employees**

<b>Last Name</b>	<b>First Name</b>	<b>Title</b>
Aitken	Andy	Sr. Hardware Engineer
Barnes	Stuart	Executive
Farrugia	Paul	GM/Director of Engineering
Frisch	David (Tony)	PLM Repeater Product Line
Manning	Malcolm	Senior Product Manager
Mathers	Gordon	Senior Engineer/PM
Powell	David	PrIncipal Hardware Engineer
Schwartz	Joerg	Sr. VP, Integrated Solutions
Taylor	Nigel	Senior Systems Engineer
Willoughby	Kevin	Mechanical Engineering Manager
Winterburn	David	Director, Software Development
Henderson	Keith	Executive
Otake	Gary	Executive
Richardson	Robert	Executive
Trinler	David	Engineering
Chang	Do il	Engineering
Rudravajjala	Vijay	Engineering
Robinson	Andrew	Engineering
McCutcheon	William	Service
Perrier	Philippe	Marketing
Higginbotham	Dylan	Operations

**EXHIBIT B**

**Proposed Bidding Procedures Order**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

XTERA COMMUNICATIONS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16-12577 ( )

(Jointly Administered)

Re: D.I. \_\_\_\_

**ORDER (I)(A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) SCHEDULING RELATED AUCTIONS AND A HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING BID PROTECTIONS; AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for the entry of an order pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (i)(a) approving procedures in connection with the sale

<sup>[1]</sup> The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (4611); Xtera Communications Canada, Ltd. (9560); Xtera Communications Hong Kong Ltd. (4611); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 750133.

of the Debtors' Assets; (b) scheduling an auction (to the extent necessary) and a hearing to consider approval of sale; (c) approving procedures related to the assumption of certain executory contracts and unexpired leases; (d) approving the form and manner of notice thereof; (e) approving bid protections; and (f) granting related relief; and (ii)(a) authorizing the sale of the Debtors' Assets pursuant to the successful bidder's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (b) approving the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases; and (c) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion as it relates to the approval of the Bidding Procedures is in the best interests of the Debtors, their estates and its creditors; and good and sufficient cause having been shown;

AND IT IS FURTHER FOUND AND DETERMINED THAT:

A. The Debtors have demonstrated a compelling and sound business justification for this Court to grant the relief requested in the Motion relating solely to the approval of the Bidding Procedures, as set forth herein, including, without limitation, (i) approval of the Bidding Procedures, (ii) the approval of the Break Up Fee and Expense Reimbursement, (iii) authorization to enter into the Stalking Horse Agreement with the Stalking Horse Purchaser

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

subject to (a) higher or otherwise better offers, (b) for cause under section 363(k) of the Bankruptcy Code, (c) approval of the terms of the sale set forth in the Stalking Horse Agreement at the Sale Hearing, under the circumstances described herein and the Motion, and (d) approval of the Assignment and Assumption Procedures, under the circumstances described herein and the Motion.

B. The Debtors' proposed notice of the Bidding Procedures, the Assumption and Assignment Procedures, the Auction and the hearing to approve the Sale of the Debtors' Assets (the "Sale Hearing") is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

C. The Bidding Procedures substantially in the form attached hereto as Exhibit 1 are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Assets.

D. The Break Up Fee and Expense Reimbursement are commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder, are: (i) actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Purchaser; reasonable and appropriate in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made and the efforts that have been made and will be expended by the Stalking Horse Purchaser; and (iv) necessary to induce the Stalking Horse Purchaser to pursue the Sale and be bound by the Stalking Horse Agreement.

E. The Sale Notice, substantially in the form attached hereto as Exhibit 3, is appropriate and reasonably calculated to provide all interested parties with timely and proper

notice of the sales of the Assets, the Bidding Procedures, the Auction and the Sale Hearing, and no other or further such notice is required.

F. The Cure Notice, substantially in the form attached hereto as Exhibit 4, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the potential assumption and assignment of the Assumed Executory Contracts and the related Cure Amount, and no other or further such notice is required.

G. The Initial Overbid and the Overbid Increments (as set forth in the Bidding Procedures) are fair, reasonable and appropriate and provide a benefit to the Debtors' estates and creditors.

H. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

I. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY FOUND, CONCLUDED, AND ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the relief requested in the Motion as it relates to the approval of the Bidding Procedures that have not been withdrawn, waived, or settled are overruled.
3. The Bidding Procedures attached hereto as Exhibit 1 are APPROVED.
4. H.I.G. Europe – Neptune, Ltd. is hereby approved to be and designated as the Stalking Horse Purchaser.



**Auction, Break Up Fee, Bid Procedures, and Related Relief**

5. Subject to (a) the Bidding Procedures (b) higher or otherwise better offers, (c) for cause under section 363(k) of the Bankruptcy Code, and (d) approval of the sale at the Sale Hearing, the Debtors' entry into the Stalking Horse Agreement (including any amendments thereto) attached as Exhibit A<sup>3</sup> to the Motion, is hereby approved, subject to final approval of the terms and conditions of the Stalking Horse Agreement, or any sale agreement submitted by Successful Bidder at the Sale Hearing with respect to the Assets.

6. Should the Stalking Horse Purchaser not be the Successful Bidder as defined in the Bid Procedures and provided the Stalking Horse Purchaser is otherwise entitled under the Stalking Horse Agreement to payment of the Break Up Fee, the Trustee is hereby authorized to pay the Break Up Fee to the Stalking Horse Purchaser as provided in the Stalking Horse Agreement. As provided in the Bid Procedures, to be treated as a Qualified Bid the bid must meet the requirements of an Initial Overbid, which includes, *inter alia*, cash consideration in an amount equal to the Break Up Fee and Expense Reimbursement. The obligation of the Trustee to pay the Break Up Fee and Expense Reimbursement shall constitute an allowed administrative expense claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code that is not subordinate to and has priority over any and all administrative expenses of the kind specified under sections 503(b) and 507(b) of the Bankruptcy Code that shall be payable at the closing of an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement).

7. The Bid Deadline shall be [\_\_\_\_\_], 2016 at 5:00 p.m. (prevailing Eastern Time).

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<sup>3</sup> For the convenience of parties in interest, a chart listing important dates set forth in this Order is attached hereto as Exhibit 2.

8. The Stalking Horse Purchaser and other secured creditors holding allowed secured claims against the Debtors shall have the right, subject to the provisions of the Bankruptcy Code, applicable law, and any agreements between secured creditors, to credit bid such claims. Any credit bid must include a cash component (or otherwise provide cash) sufficient to pay all liens senior to the liens of the party making the credit bid on the collateral that is subject to the credit bid unless such senior lienholder(s) shall otherwise consent in writing prior to or at the Auction.

9. Any person or entity (a "Pre-Petition Licensee") that is party to a pre-petition contract (the "Pre-Petition Licenses") with the Xtera Communications, Inc. ("Xtera Inc.") or any of the Seller Affiliates (as defined in the Stalking Horse Agreement) pursuant to which such Xtera Inc. or the Seller Affiliates granted a license under its intellectual property that wishes to retain any of such Pre-Petition Licensee's rights under section 365(n)(1)(B) of the Bankruptcy Code must file in this case a notice of election to retain such rights (a "Notice of Election") on or prior to \_\_\_\_\_, 2016 (the "Notice of Election Deadline") and serve such notice on the Debtors and the Stalking Horse Bidder. A Pre-Petition Licensee that fails to timely file a Notice of Election with respect to a Pre-Petition License will be irrevocably deemed to have elected to treat each such Pre-Petition License as terminated under section 365(n)(1)(A) of the Bankruptcy Code.

10. *The Notice Of Deadline To Make Election To Retain Rights Under Section 365(n) of the Bankruptcy Code With Respect To Agreements Pursuant To Which Xtera Communications, Inc. Leased Rights To Intellectual Property*, substantially in the form attached hereto as Exhibit 5, is approved in all respects. The Debtors shall serve, via first class mail, such notice, not later than three (3) business days after the entry of this Order on all known creditors

and all other parties whose rights the Debtors reasonably believe may be affected by failure to file a timely Notice of Election.

11. The Auction, if necessary, shall be held on [\_\_\_\_\_], 2016 at 10:00 a.m. (prevailing Eastern Time) at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction. The Auction may be adjourned by the Debtors, in consultation with Wilmington Trust, N.A., as administrative and collateral agent under the DIP Facility (the “DIP Agent”) and the Creditors’ Committee by announcement at the Auction or in open Court without any further notice required, and in such an event, the Debtors shall provide reasonable notice to Qualified Bidders of the time and place for the resumption of the Auction.

12. At the Auction each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed.

13. Only a Qualified Bidder who has submitted a Qualified Bid by the Bid Deadline shall be eligible to participate at the Auction; provided, however, (i) that the Stalking Horse Purchaser is hereby deemed a Qualified Bidder, and the Stalking Horse Agreement is deemed a Qualified Bid, and (ii) that any party in interest may attend (but not participate in) the Auction if they provide the Debtors with written notice of their intention to attend the Auction on or before the Bid Deadline. Such written notice must be sent to proposed counsel for the Debtors via electronic mail, to Jamila Willis, Esq., at jamila.willis@dlapiper.com.

14. The Debtors, in consultation with the Creditors’ Committee and the DIP Agent, shall determine which offer is the highest and otherwise best offer for the Assets, giving effect to

any liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors.

**Notice of Sale**

15. The Sale Hearing, at which the Court shall consider the Debtors' request in the Motion to approve the Stalking Horse Agreement, or any sale agreement submitted by the Successful Bidder, shall be held on [\_\_\_\_\_], 2016 at [\_\_:\_\_] [\_\_].m. (prevailing Eastern Time) before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801. Any objections to the Sales shall be filed and served so as to be received no later than [\_\_\_\_\_], 2016 at 4:00 p.m. (prevailing Eastern Time) by: (i) proposed counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. (Thomas.Califano@dlapiper.com); and DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. (Stuart.Brown@dlapiper.com), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. (daniel.guyder@allenoverly.com); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller (cmiller@MNAT.com); (iv) counsel to the DIP Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith (michael.messersmith@kayescholer.com) and Seth J. Kleinman (seth.kleinman@kayescholer.com); and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin

(mailto:lplotkin@lsl-la.com) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com) (collectively, the “Notice Parties”).

16. The Sale Hearing may be adjourned from time to time in consultation with the DIP Agent and the Creditors’ Committee, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

17. The following forms of notice are approved (a) Notice of Sale Procedures, Auction Date and Sale Hearing, in the form substantially similar to that attached hereto as Exhibit 3 (the “Sale Notice”) and (b) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned (the “Cure Notice”), in the form substantially similar to that attached hereto as Exhibit 4.

18. The Debtors shall, within two (2) business days after the entry of this Order, serve this Order and the Sale Notice by first class mail, postage prepaid on: (a) the U.S. Trustee; (b) counsel to the Creditors’ Committee; (c) any parties requesting notices in these cases pursuant to Bankruptcy Rule 2002; (d) counsel to the Stalking Horse Purchaser; (e) the United States Attorney’s Office and any Attorneys General for the District of Delaware, and Texas and any other states where the Debtors conduct business; (f) the Internal Revenue Service and other applicable taxing authorities; (g) all known parties that may be asserting a lien or interest against any of the Assets; (h) counterparties to executory contracts and unexpired leases; and (i) all Potential Bidders (collectively with the parties specified in this paragraph, the “Sale Notice Parties”).

19. Within five (5) business days of the entry of this Order, the Debtors will publish a notice, substantially similar to the form of the Sale Notice (the “Publication Notice”), in *The New York Times (National Edition)* and/or such other publication(s) as the Debtors and their advisors deem appropriate.

**Assumption and Assignment Procedures**

20. The Debtors shall serve the Cure Notice upon each counterparty to the Assumed Executory Contracts or their counsel (if known), and shall file the Cure Notice, by no later than the date that is five (5) business days after entry of this Order. The Cure Notice shall state the date, time, and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”).

21. If any counterparty to an Assumed Executory Contract objects for any reason to the assumption and assignment of an Assumed Executory Contract (an “Assumption Objection”), including with respect to the ability of the Stalking Horse Purchaser or any other purchaser of the Assets (a “Purchaser”), as applicable, to provide adequate assurance of future performance under the Assumed Executory Contract, such counterparty must file and serve such Assumption Objection so as to be received by the Notice Parties by no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days after the date of service of the Cure Notice (the “Assumption Objection Deadline”); provided, however, that any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the ability of a Successful Bidder other than the

Stalking Horse Purchaser to provide adequate assurance of future performance under the Assumed Executory Contract. The Court will make any and all determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

22. If a Contract or Lease is assumed and assigned pursuant to Court order, then except for Disputed Cure Amounts (as defined herein), the Assumed Executory Contract counterparty shall receive no later than three (3) business days following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice, unless otherwise agreed. To the extent the Assumed Executory Contract counterparty wishes to object to the Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with specificity each and every asserted default in any executory contract or unexpired lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtors in the Cure Notice.

23. In the event that the Debtors and the non-debtors party cannot resolve the Cure Amount, the Debtors shall segregate any disputed Cure Amounts (“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties, unless the Successful Bidder (whether the Stalking Horse Purchaser or other person) instead elects to reject the related contract or lease. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. The pendency of a dispute relating to the Cure Amount will not prevent or delay the assumption and assignment of any Assumed Executory Contract or the sale of the Assets to the Successful Bidder. Any counterparty to an Assumed Executory Contract that fails to timely file and serve

an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice.

24. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

#### **Miscellaneous**

25. Notwithstanding anything to the contrary contained in this Order or otherwise: (i) the right of the DIP Agent (on behalf the DIP Lenders) to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to Agent and the DIP Lenders, shall be expressly reserved and not modified, waived or impaired in any way by this Order; (ii) if the Successful Bidder is not the Stalking Horse Purchaser all cash proceeds generated from the sale of any Assets to the Successful Bidder shall be paid to DIP Agent upon the closing of such sale for application against the obligations owing by the Debtor to DIP Agent and the DIP Lenders and until such time as all such obligations have been fully repaid and satisfied in full in accordance with the terms and conditions of the interim or final Order of this Court (such Order, the "DIP Order") approving the DIP Facility and the DIP Documents (as defined in the DIP Order); and (iii) the Debtor shall consult with DIP Agent and the Committee prior to employing any additional procedures rules at any Auction.

26. Notwithstanding anything to the contrary contained in this Order or otherwise, nothing in this Order shall amend, modify, or impair any provision of the DIP Order, or the rights of Debtor, the DIP Agent of the DIP Lenders thereunder.



27. To the extent the provisions of this Order are inconsistent with the provisions of any exhibit referenced herein or with the Motion, the provisions of this Order shall control.

28. Notwithstanding anything to the contrary in the Motion or this Order, the relief granted herein and any payment authorized by, and any authorizations contained herein, are and shall be subject to the terms and requirements of any orders authorizing use of cash collateral or debtor-in-possession financing approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use).

29. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion, as set forth herein.

30. To the extent any of the deadlines set forth in the Bid Procedures Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Order shall govern.

31. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

32. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

\_\_\_\_\_  
THE HON.  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bidding Procedures**

## **BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the sale of substantially all of the assets (the “Assets”) of Xtera Communications, Inc. (“Xtera Inc.”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in connection with the chapter 11 cases of the Debtors pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

Xtera Inc. (on behalf of itself and the Seller Affiliates identified herein) entered into a stalking horse asset purchase agreement with H.I.G. Europe - Neptune, Ltd. (the “Stalking Horse Purchaser”), pursuant to which the Stalking Horse Purchaser shall acquire the Assets from Xtera Inc. and the Seller Affiliates on the terms and conditions specified therein (together with the schedules, exhibits, and related documents thereto, the “Stalking Horse Agreement”). The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement or the bidding procedures order (the “Bidding Procedures”) entered by the Bankruptcy Court approving, among other things, these Bidding Procedures, as applicable.

### **I. ASSETS TO BE SOLD**

The Debtors seek to complete a sale of the Assets (the “Sale”). The Stalking Horse Agreement will serve as the “stalking-horse” bid for the Assets.

### **II. THE BID PROCEDURES**

In order to ensure that the Debtors receive the maximum value for the Assets, they intend to hold a sale process for the Assets pursuant to the procedures and on the timeline proposed herein.

#### **A. Provisions Governing Qualifications of Bidders**

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Bidder, who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity that will be bidding for the Assets, or otherwise participating in connection with such bid; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, which shall inure to the benefit of any purchaser of the Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above and that the Debtors determine in their reasonable business judgment, after consultation with their advisors, the Creditors' Committee and its advisors, the DIP Agent and the DIP Lenders and its advisors, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a "Qualified Bidder." The Debtors will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtors will determine, after consultation with the Creditors' Committee, the DIP Agent and the DIP Lenders if such Potential Bidder is a Qualified Bidder, and will notify the Potential Bidder if such a determination is made.

**B. Due Diligence**

The Debtors will afford any Qualified Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and include the date of the Auction (as defined below); provided, however, that any Qualified Bid (as defined below) submitted shall be irrevocable until the selection of the Successful Bidder.

**C. Provisions Governing Qualified Bids**

A bid submitted by any party other than the Stalking Horse Purchaser will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a "Qualified Bid"):

- a) it states that the applicable Qualified Bidder offers to purchase any or all of the Assets;
- b) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as (i) the Successful Bidder, then the offer shall remain irrevocable until the earlier of (A) the date the Sale Order is entered if the sale transaction with such Successful Bidder is denied and (B) the date that is thirty (30) days after the Sale Hearing, or (ii) the Back-Up Bidder, then the offer shall remain irrevocable until the earlier of (A) the date of closing of the transaction with the Successful Bidder and (B) the date that is sixty (60) days after the Sale Hearing;<sup>1</sup>
- c) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

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<sup>1</sup> Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder

- d) it sets forth each governmental, regulatory, and other third-party approval required for the Qualified Bidder to consummate the transaction, including in connection with the assignment of any executory contracts and unexpired leases, and the time period within which the Qualified Bidder expects to receive such approvals;
- e) it includes a duly authorized and executed copy of a purchase or agreement (a "Purchase Agreement"), including the purchase price for the Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked ("Marked Agreement") to show any amendments and modifications to the Stalking Horse Agreement, and the proposed order to approve the sale by the Bankruptcy Court;
- f) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors, in consultation with the Creditors' Committee, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- g) it must have a value to the Debtors, in the Debtors' exercise of their reasonable business judgment, after consultation with their advisors, the Committee and its advisors, the DIP Agent and the DIP Lenders and its advisors, and that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus \$250,000 (the "Initial Overbid");<sup>2</sup>
- h) in the case of a bid that incorporates a credit bid, it must contain a cash component sufficient to satisfy in full all senior liens on the collateral subject to the credit bid;
- i) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;
- j) it contains an irrevocable commitment to (i) fund the Debtors from conclusion of the Auction through Closing and (ii) make payment to the Debtors' prepetition and post-petition lenders, including H.I.G. European Capital Partners LLP, as applicable of all allowed claims due under the credit agreements with such lender that are secured by valid, perfected liens against the assets being sold;;
- k) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- l) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (B) has relied solely upon its own independent review,

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<sup>2</sup> The initial overbid shall be (a) an amount equal to (i) the Cash Consideration, the DIP Credit Bid and Release and the Prepetition Credit Bid Release (if any), and (ii) cash consideration in an amount equal to the Break Up Fee and Expense Reimbursement, plus (b) \$250,000 in cash.

- investigation and/or inspection of any documents and/or the Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;
- m) it includes evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Creditors' Committee, the DIP Agent and the DIP Lenders, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement;
  - n) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the Purchase Price;
  - o) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
  - p) it contains such other information reasonably requested by the Debtors; and
  - q) it is received prior to the Bid Deadline.

Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction, and the Sale.

The Debtors shall notify the Creditors' Committee, the Stalking Horse Purchaser, the DIP Agent, and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline.

#### **D. Bid Deadline**

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. (thomas.califano@dlapiper.com); and DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. (stuart.brown@dlapiper.com), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. (daniel.guyder@allenoverly.com); and Morris, Nichols, Arsht

& Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller (cmiller@MNAT.com), (iv) counsel to the DIP Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith (michael.messersmith@kayescholer.com) and Seth J. Kleinman (seth.kleinman@kayescholer.com), and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin (mailto:lplotkin@lsl-la.com) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com), so as to be received not later than [\_\_\_\_\_], 2016 at 5:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”).

**E. Credit Bidding**

The Stalking Horse Purchaser holds a first priority a security interest in the Assets and its proposed purchase price consists of a credit bid and/or assumption of debt for the Assets. The Stalking Horse Purchaser may submit additional credit bids for the Assets, pursuant to section 363(k) as it deems necessary and desirable. In addition to the Stalking Horse Purchaser, other secured creditors holding allowed secured claims against the Debtor shall have the right, subject to the provisions of the Bankruptcy Code, applicable law, and any agreements between secured creditors, to credit bid all or any portion of such claims. In addition to the other requirements of an Initial Overbid, any credit bid made by a party other than the Stalking Horse Purchaser must include a cash component (or otherwise provide cash) sufficient to satisfy all liens senior to the liens of party making the credit bid on the collateral that is subject to the credit bid unless such senior lienholder(s) shall otherwise consent in writing prior to the Auction.

**F. Evaluation of Competing Bids**

A Qualified Bid will be valued by the Debtors, in consultation with the Creditors’ Committee and the DIP Agent, based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtors in their reasonable discretion in consultation with the Creditors’ Committee and the DIP Agent.

**G. No Qualified Bids**

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Assets.

**H. Auction Process**

If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct auctions of the Assets (the “Auction”), which shall be transcribed on [\_\_\_\_\_], 2016 (the “Auction Date”) at 10:00 a.m. (prevailing Eastern Time), at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, or such other location as shall be timely communicated to the Stalking Horse Purchaser and Qualified Bidders who have timely submitted a Qualified Bid, and the

Creditors' Committee and the DIP Agent. The Auction shall run in accordance with the following procedures:

- a) The Auction will be conducted openly. Only a Qualified Bidder who has submitted a Qualified Bid by the Bid Deadline shall be eligible to participate at the Auction; *provided, however*, that any party in interest may attend (but not participate in) the Auction if they provide the Debtors with written notice of their intention to attend the Auction on or before the Bid Deadline. Such written notice must be sent to proposed counsel for the Debtors via electronic mail, to Jamila Willis, Esq., at jamila.willis@dlapiper.com.
- b) Only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;
- c) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors, the Creditors' Committee, and the DIP Agent whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid which the Debtors believe in their reasonable discretion is the highest or otherwise best offer (the "Starting Bid") to all Qualified Bidders, the Creditors' Committee, and the DIP Agent;
- e) All Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- f) The Debtors, after consultation with their advisors, the Creditors' Committee and its advisors, and the DIP Agent and its advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction;
- g) Bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$250,000 above the prior bid (the "Overbid Increments"). After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that it believes to be the highest or otherwise better offer (the "Leading Bid"). A



round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtors, in consultation with the Creditors' Committee and the DIP Agent, will give effect to any liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors; and

- h) The Auction may be adjourned by the Debtors in consultation with the DIP Agent and in such an event, the Debtors shall provide reasonable notice to Qualified Bidders of the time and place for the resumption of the Auction.

**I. Selection of Successful Bid**

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors, the Creditors' Committee and its advisors, and the DIP Agent and its advisors, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid, collectively, the "Successful Bidder"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors, after consultation with the Creditors' Committee and the DIP Agent, at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) days after adjournment of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors will sell the Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

**J. Return of Deposits**

All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

**K. Back-Up Bidder**

If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtors, in consultation with the Creditors' Committee and the DIP Agent, in the exercise of their business judgment, at the Auction shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until the earlier of a closing of a sale transaction with the Successful Bidder and the date that is sixty (60) days after the Sale Hearing.

Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Notwithstanding the foregoing, if the Stalking Horse Purchaser is not the prevailing bidder at the conclusion of the Auction, the Stalking Horse Purchaser, may, at its sole and absolute discretion, keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement (as the same may be improved upon in the Auction) open and irrevocable until entry of an order approving the bid of a prevailing bidder.

**L. Modifications**

The Debtors, in consultation with the Stalking Horse Purchaser, the Creditors' Committee, and the DIP Agent, may waive or modify the provisions in these Bidding Procedures or adopt additional procedures as they see fit in their business judgment; provided that such modifications are disclosed to all Potential Bidders or Qualified Bidders, as applicable, prior to or during the Auction. For the avoidance of doubt, the Debtors, in the exercise of their fiduciary duties and in their sole discretion, may modify or waive the provisions of these Bidding Procedures without the prior consent of any other party, including the Creditors' Committee and the DIP Lenders.

**M. Consent to Jurisdiction**

All bidders at the Auction shall be deemed to have consented to these Bidding Procedures and to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the sale and the construction and enforcement of the Purchase Agreement.

**III. Sale Hearing**

The Debtors will seek entry of an order from the Bankruptcy Court at the Sale Hearing to begin on [\_\_\_\_\_], 2016 at [\_\_:\_\_] [\_\_].m. (prevailing Eastern time), to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures.

**Exhibit 2**

**Significant Dates<sup>1</sup>**

- **Bid Deadline:** [\_\_\_\_\_] , 2016 at 5:00 p.m. (ET)
- **Auction:** [\_\_\_\_\_] , 2016 at 10:00 a.m. (ET)
- **Assumption Objection Deadline** [\_\_\_\_\_] , 2016 at 4:00 p.m. (ET)
- **Notice of Election Deadline** [\_\_\_\_\_] , 2016 at 4:00 p.m. (ET)
- **Sale Objection Deadline:** [\_\_\_\_\_] , 2016 at 4:00 p.m. (ET)
- **Sale Hearing:** [\_\_\_\_\_] , 2016 at [\_\_:\_\_] [\_\_].m. (ET)

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<sup>1</sup> These dates are subject to modification.

**Exhibit 3**

**Sale Notice**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

XTERA COMMUNICATIONS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16-12577 ( )

(Jointly Administered)

**NOTICE OF SALE PROCEDURES,  
AUCTION DATE AND SALE HEARING**

**PLEASE TAKE NOTICE** that on November 15, 2016, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Motion of the Debtors and Debtors in Possession Pursuant to Section 105(a), 363, and 365 of the Bankruptcy Code for Entry of Orders (I)(A) Approving Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets; (B) Scheduling Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Bid Protections; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of the Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* (the “Motion”).<sup>2</sup> The Debtors seek, among other things, to sell their Assets to the successful bidders (the “Successful Bidder”) at an auction free and clear of all liens, claims, encumbrances, and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_\_], 2016, the Court entered an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale of the Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding Procedures, auctions (the “Auction”) to sell the Assets will be conducted on [\_\_\_\_\_], 2016

<sup>[1]</sup> The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (4611); Xtera Communications Canada, Ltd. (9560); Xtera Communications Hong Kong Ltd. (4611); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 750133.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

at 10:00 a.m. (prevailing Eastern Time) at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sales of the Assets to the Successful Bidder (the “Sale Hearing”) before the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 on [\_\_\_\_\_], **2016 at [\_\_:\_\_] [.]m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed and served **so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on [\_\_\_\_\_], 2016** by: (i) counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. (thomas.califano@dlapiper.com), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. (stuart.brown@dlapiper.com), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. (daniel.guyder@allenoverly.com); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller (cmiller@MNAT.com); (iv) counsel to the DIP Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith (michael.messersmith@kayescholer.com) and Seth J. Kleinman (seth.kleinman@kayescholer.com); and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin (mailto:lplotkin@lsl-la.com) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com) (collectively, the “Notice Parties”).

**PLEASE TAKE FURTHER NOTICE** that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, the Bidding Procedures, and the Bidding Procedures Order, which Bidding Procedures Order shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020, Attn: Jamila J. Willis, or by emailing jamila.willis@dlapiper.com. Copies of the Motion and Bid Procedures Order also may be obtained free of charge on the Debtors’ case website: <http://dm.epiq11.com/#/case/xci>

Dated: [\_\_\_\_\_] , 2016  
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/

Stuart M. Brown (DE 4050)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: stuart.brown@dlapiper.com

-and-

Thomas R. Califano (pro hac vice admission pending)  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: thomas.califano@dlapiper.com

*Proposed Counsel to Debtors and  
Debtors in Possession*

**Exhibit 4**

**Cure Notice**



**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  
  
XTERA COMMUNICATIONS, INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 16-12577 ( )  
  
(Jointly Administered)

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES OF THE DEBTORS  
THAT MAY BE ASSUMED AND ASSIGNED**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (the “Debtors”) may seek to assume an executory contract or unexpired lease to which you may be a party. The executory contracts and unexpired leases that the Debtors may seek to assume (each such potentially assumed contract and lease, an “Assumed Executory Contracts”) are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, based upon the Debtors’ books and records, which the Debtors assert is owed to cure any defaults existing under the Assumed Executory Contract. If you have questions regarding this notice, you should consult with appropriate counsel.

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the Cure Amount shown for the Assumed Executory Contract(s) on Exhibit A to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, an objection on or before \_\_\_\_\_, **2016 at 4:00 p.m. (prevailing Eastern Time)**. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter or as otherwise agreed), the Cure Amount set forth herein, if any. Any non-debtors party to an Assumed Executory Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit A.

<sup>[1]</sup> The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (4611); Xtera Communications Canada, Ltd. (9560); Xtera Communications Hong Kong Ltd. (4611); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 750133.

**PLEASE TAKE FURTHER NOTICE** that if you have any other objection to the Debtors' assumption and assignment of the Assumed Executory Contract to which you may be a party, including with respect to the ability of the Stalking Horse Purchaser to provide adequate assurance of future performance under the Assumed Executory Contract, you also must file that objection in writing no later than 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2016, provided, however, that any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the ability of a Successful Bidder other than the Stalking Horse Purchaser to provide adequate assurance of future performance under the Assumed Executory Contract.

**PLEASE TAKE FURTHER NOTICE** that on November 15, 2016, the Debtors filed the *Motion of the Debtors and Debtors in Possession Pursuant to Section 105(a), 363, and 365 of the Bankruptcy Code for Entry of Orders (I)(A) Approving Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (B) Scheduling Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Bid Protections; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* (the "Motion").<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on \_\_\_\_\_, 2016, the Court entered an Order (the "Bidding Procedures Order") approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the Sale of the Debtors' Assets, and (ii) procedures for the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases.

**PLEASE TAKE FURTHER NOTICE** that the Motion also seeks Court approval of the sale (the "Sale") of the Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code, including the assumption by the Debtors and assignment to the buyer of the Assumed Executory Contracts pursuant to section 365 of the Bankruptcy Code. Within 24 hours after adjournment of the Auction (if any), unless otherwise agreed to by the Debtors, but in no event, at least one (1) business day prior to the Sale Hearing, the Debtors shall file a notice identifying the Successful Bidder with the Bankruptcy Court and serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

**PLEASE TAKE FURTHER NOTICE** that a hearing (the "Sale Hearing") to approve the Sales and authorize the assumption and assignment of the Assumed Executory Contracts will be held on [\_\_\_\_\_] , 2016 at 10:00 a.m. (prevailing Eastern Time), before the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

**PLEASE TAKE FURTHER NOTICE** that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time: (i) counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. ([thomas.califano@dlapiper.com](mailto:thomas.califano@dlapiper.com)), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. ([stuart.brown@dlapiper.com](mailto:stuart.brown@dlapiper.com)), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. ([daniel.guyder@allenoverly.com](mailto:daniel.guyder@allenoverly.com)); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller ([cmiller@MNAT.com](mailto:cmiller@MNAT.com)); (iv) counsel to the DIP Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith ([michael.messersmith@kayescholer.com](mailto:michael.messersmith@kayescholer.com)) and Seth J. Kleinman ([seth.kleinman@kayescholer.com](mailto:seth.kleinman@kayescholer.com)); and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin (<mailto:lplotkin@lsl-la.com>) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr. ([chipman@chipmanbrown.com](mailto:chipman@chipmanbrown.com)) (collectively, the “Notice Parties”).

**PLEASE TAKE FURTHER NOTICE** that the buyer shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code, in connection with the proposed assignment of any Assumed Executory Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to sections 365(b) and (f) of the Bankruptcy Code at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that, in the event that the Debtors and the non-debtors party cannot resolve the Cure Amount, the Debtors shall segregate any disputed Cure Amounts (“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties unless the Successful Bidder or Stalking Horse Purchaser elects to reject the related contract or lease. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. The pendency of a dispute relating to the Cure Amount will not prevent or delay the assumption and assignment of any Assumed Executory Contract or the sale of the Assets to the Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtors and the Debtors’ estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed Executory Contracts.

**PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the Debtors to assume any Assumed Executory Contracts or to pay any Cure Amount.<sup>3</sup>

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY NON-DEBTORS PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DO NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

Dated: [\_\_\_\_\_] , 2016  
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/

\_\_\_\_\_  
Stuart M. Brown (DE 4050)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: stuart.brown@dlapiper.com

-and-

Thomas R. Califano (pro hac vice admission pending)  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: thomas.califano@dlapiper.com

*Proposed Counsel to Debtors and  
Debtors in Possession*

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<sup>3</sup> “Assumed Executory Contracts” are those Contracts and Leases that the Debtors believes may be assumed and assigned as part of the orderly transfer of the Assets; however, the Successful Bidder may choose to exclude certain of the Debtors’ Contracts or Leases from the list of Assumed Executory Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be assumed by the Debtors.

**Exhibit 5**

**Section 365(n) Election Deadline Notice**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:  
  
XTERA COMMUNICATIONS, INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 16-12577 ( )  
  
(Jointly Administered)

**NOTICE OF DEADLINE TO MAKE ELECTION TO RETAIN RIGHTS UNDER SECTION 365(N) OF THE BANKRUPTCY CODE WITH RESPECT TO AGREEMENTS PURSUANT TO WHICH XTERA COMMUNICATIONS, INC. LEASED RIGHTS TO INTELLECTUAL PROPERTY**

**PLEASE TAKE NOTICE** that on November 15, 2016, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Motion of the Debtors and Debtors in Possession Pursuant to Section 105(a), 363, and 365 of the Bankruptcy Code for Entry of Orders (I)(A) Approving Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets; (B) Scheduling Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Bid Protections; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of the Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* (the “Motion”).<sup>2</sup> Pursuant to the Motion, the Debtors are seeking to sell substantially all their assets at an auction free and clear of all liens, claims, encumbrances, and other interests pursuant to sections 363 and 365 of the Bankruptcy Code (the “Sale”).

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_\_], 2016, the Court entered an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale.

**PLEASE TAKE FURTHER NOTICE** that you are receiving this notice because you may be a party (a “Pre-Petition Licensee”) to a pre-petition license of intellectual property with Xtera Communications, Inc. (“Xtera Inc.”) and/or one or more of the Debtors in these

<sup>1</sup> The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (4611); Xtera Communications Canada, Ltd. (9560); Xtera Communications Hong Kong Ltd. (4611); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 750133.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Chapter 11 Cases pursuant to which one or more of the Debtors have granted a license to their intellectual property (a “Pre-Petition License”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures Order, any Pre-Petition Licensee that wishes to retain its rights under a Pre-Petition License pursuant to section 365(n)(1)(B) of the Bankruptcy Code, must file in this case a notice of election to retain such rights (a “Notice of Election”) on or prior to \_\_\_\_\_, 2016 (the “Notice of Election Deadline”) and serve such notice on the following parties (i) counsel to the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, 25th Floor, New York, New York 10020-1104, Attn: Thomas R. Califano, Esq. (thomas.califano@dlapiper.com), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart M. Brown, Esq. (stuart.brown@dlapiper.com), (ii) financial advisors to the Debtors, Cowen and Company, 599 Lexington Avenue, 27th Floor, New York, New York 10022 Attn: Lorie R. Beers; (iii) counsel to the Postpetition Lender, Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder, Esq. (daniel.guyder@allenoverly.com); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899, Attn: Curtis S. Miller (cmiller@MNAT.com); (iv) counsel to the DIP Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614, Attn: Michael D. Messersmith (michael.messersmith@kayescholer.com) and Seth J. Kleinman ([seth.kleinman@kayescholer.com](mailto:seth.kleinman@kayescholer.com)); and (v) counsel to the Prepetition Senior Lender, Levy, Small & Lallas, 815 Moraga Drive, Los Angeles, CA 90049, Attn: Leo D. Plotkin (mailto:lplotkin@lsl-la.com) and Chipman Brown Cicero & Cole, LLP., Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com) (collectively, the “Notice Parties”).

**PLEASE TAKE FURTHER NOTICE** that any Pre-Petition Licensee that fails to timely file a Notice of Election with respect to a Pre-Petition License WILL BE IRREVOCABLY DEEMED TO HAVE ELECTED TO TREAT SUCH PRE-PETITION LICENSE AS TERMINATED UNDER SECTION 365(n)(1)(A) OF THE BANKRUPTCY CODE AND WILL HAVE NO FURTHER RIGHTS UNDER SUCH PRE-PETITION LICENSE.

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “Sale Hearing”) to approve the sale and authorize the assumption and assignment of the Pre-Petition Licenses will be held on [\_\_\_\_\_], 2016 at 10:00 a.m. (prevailing Eastern Time), before the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing

**PLEASE TAKE FURTHER NOTICE** that the Debtors, the DIP Agent, the DIP Lenders, and any Successful Bidder (including the Stalking Horse Bidder) reserve their rights to object to any Notices of Election on any and all available grounds, which objections will be heard at the Sale Hearing. If you have questions regarding this notice, you should consult with appropriate counsel.

Dated: [\_\_\_\_\_] , 2016  
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/

Stuart M. Brown (DE 4050)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: stuart.brown@dlapiper.com

-and-

Thomas R. Califano (pro hac vice admission pending)  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: thomas.califano@dlapiper.com

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