

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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In re: : Chapter 11
 :
 GT ADVANCED TECHNOLOGIES INC., *et al.*: Case No. 14-11916-HJB
 :
 Debtors.¹ :
 : Joint Administration Requested
 -----X

DEBTORS' EMERGENCY MOTION FOR (A) ENTRY OF ORDER, PURSUANT TO BANKRUPTCY CODE SECTION 107(b) AND BANKRUPTCY RULE 9018, AUTHORIZING FILING UNDER SEAL OF UNREDACTED VERSIONS OF SUPPLEMENTAL FIRST DAY DECLARATION, MOTION TO REJECT, WIND DOWN MOTION, MOTION TO EXPEDITE OR (B) ALTERNATIVELY, ENTRY OF ORDER, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 107(a) DIRECTING DEBTORS TO FILE UNREDACTED VERSIONS THEREOF

GT Advanced Technologies Inc. (“GT”) and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, “GTAT” or the “Debtors”) hereby submit this motion (the “Motion”) for (a) entry of an order, pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing GTAT to file under seal unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite (each as defined below), which are being submitted to the Court for *in camera* review, or (b) in the alternative, and to the extent that the Court determines that the materials in the Supplemental First Day Declaration, the Motion to Reject, the Wind Down

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors’ corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

Motion, and the Motion to Expedite are not subject to confidentiality obligation or entitled to the protections of section 107(b) of the Bankruptcy Code, entry of an order, pursuant to sections 105(a) and 107(a) of the Bankruptcy Code, directing GTAT to file the unredacted versions thereof on the Court's docket. In support of this Motion, GTAT respectfully represents:

PRELIMINARY STATEMENT

1. As a result of the transactions entered into between GTAT and Apple, Inc. and its affiliates (collectively, "Apple"), GTAT Corporation ("GTAT Corp."), a wholly owned subsidiary of GT, is subject to numerous confidentiality obligations (the "Confidentiality Obligations"). These Confidentiality Obligations broadly preclude GTAT Corp. from disclosing information concerning the nature of GTAT Corp.'s business relationship with Apple and other nonpublic information related to the transactions between them, except to the extent required by law. These agreements further provide that each breach of the Confidentiality Obligations will require GTAT Corp. to pay liquidated damages to Apple in an amount of **\$50 million per occurrence**.

2. To avoid the risk of having to defend against the assertion of substantial liquidated damages claims by Apple, GTAT has redacted the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite to remove all information that could give Apple an argument that GTAT Corp. violated its Confidentiality Obligations. Indeed, GTAT Corp. has taken the extraordinary precaution of seeking to file this *Motion to Seal* under seal because Apple has treated the confidentiality agreement itself as "confidential."

3. Through this Motion, GTAT requests that the Court grant one of two alternative forms of relief. If the Court determines that the materials redacted from the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite are

subject to the confidentiality obligations and entitled to be shielded from public view under section 107(b) of the Bankruptcy Code, GTAT requests that the Court authorize GTAT to file unredacted versions of these documents under seal. However, to the extent that the Court determines that the information is not subject to the confidentiality obligations or entitled to be shielded under section 107(b), GTAT requests that it be **directed** to file unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite Hearing on the Court's docket.

4. GTAT requests these alternative forms of relief because courts have long recognized a strong presumption of public access to court records.² “This preference for public access is rooted in the public’s first amendment right to know about the administration of justice.”³ Therefore, as the Second Circuit explained in *Orion*, a judge must *carefully and skeptically review sealing requests* to ensure that there really is an “extraordinary circumstance or compelling need.”⁴ Moreover, on a purely practical level, the sealing of court records inflicts a costly nuisance on the judicial system.⁵ Mechanical and logistical problems of sealing the files, finding extra space in the vault, satisfying handling requirements, plus the related direct and indirect costs, impose substantial burdens on the clerk’s office and on a judge’s staff. All these factors argue strongly for open access to court records in the bankruptcy court.⁶

5. GTAT believes that, in the interest of their creditors, equity holders, and other stakeholders, as well as to ensure an open, transparent, and fair process in these chapter 11 cases,

² See, e.g., *Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 597-98 (1978).

³ *Video Software Dealers Assn v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 26 (2d Cir. 1994).

⁴ *Orion*, 21 F.3d at 27 (citing *City of Hartford v. Chase*, 942 F.2d 130, 135-36 (2d Cir. 1991)).

⁵ See *City of Hartford v. Chase*, 942 F.2d 130, 137 (2d Cir. 1991) (Pratt, J., concurring).

⁶ *Orion*, 21 F.3d at 26.

unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite should be filed. Although institutions like Apple frequently desire to keep their entire business operations confidential, that position creates significant logistical problems in the chapter 11 context. While parties may have a legitimate interest in protecting their trade secrets because disclosure of the “secret sauce” reduces the value of a business, many times the information for which protection is sought does not require the level of protection requested.

6. Blanket confidentiality for all matters relating to one party in a chapter 11 case risks allowing that party to have disproportionate control over the case. Indeed, giving one party that level of control over the flow of information prevents all creditors, equity holders, and stakeholders with a direct interest in the case from standing on equal footing when it comes to access to information about GTAT’s business. In addition, conditions that severely limit the use of information about the debtor during the case unnecessarily drive up the cost for creditors who are seeking to use that information for legitimate purposes, including exercising their rights under the Bankruptcy Code (*e.g.*, evaluating a chapter 11 plan and disclosure statement).

7. In addition to the significant costs involved, having to deal with onerous confidentiality restrictions can cause a significant delay in the dissemination of information at the time when it is needed. In large, fast-moving chapter 11 cases, this puts general creditors and other stakeholders at an unfair disadvantage since the creditors and shareholders cannot get the requested information in time to effectively make use of it. In sum, when a party is allowed to claim that “*all*” information relating to their business operation is confidential, it permits that party to control the flow of information and put onerous conditions about when, where and how it is used. Accordingly, the Court should carefully and skeptically scrutinize whether the

confidentiality required under GTAT's agreements with Apple require sealing the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite in this case.

8. GTAT also believes that Congress's express desire for public access in bankruptcy cases—codified in section 107(a) of the Bankruptcy Code—outweighs contractual demands for secrecy. This is especially true as it concerns the Supplemental First Day Declaration, which sets forth the background of GTAT's business and their chapter 11 filings, including, most significantly, key aspects of the transactions between GTAT and Apple. However, absent express direction from the Court, GTAT cannot take the risk that it may become subject to substantial liquidated damages claims by Apple for breach of its Confidentiality Obligations. Even if, as GTAT believes, it would prevail in any such dispute, the sheer cost and time expended to deal with such matters could have a negative impact on GTAT's reorganization efforts.

JURISDICTION, VENUE AND STATUTORY BASIS

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

10. The statutory bases for the relief requested herein are sections 105(a) and 107 of the Bankruptcy Code and Bankruptcy Rule 9018.

BACKGROUND

11. On October 6, 2014 (the "Petition Date"), GTAT commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire (the "Court"). GTAT continues to operate its businesses and manage its properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy

Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no committees have been appointed or designated.

12. GTAT has requested that these chapter 11 cases be consolidated for procedural purposes only and jointly administered pursuant to Bankruptcy Rule 1015(b).

13. Information regarding GTAT's business, capital structure, and the circumstances leading to these chapter 11 cases is set forth in the *Declaration of Daniel W. Squiller in Support of Chapter 11 Petitions and First-Day Motions* [Docket No. 14] (the "First Day Declaration") and the *Supplemental Declaration of Daniel W. Squiller in Support of Chapter 11 Petitions and First-Day Motions* (the "Supplemental First Day Declaration"), which are incorporated herein by reference.

14. On the date hereof, GTAT filed its *Motion, Pursuant to Bankruptcy Code Section 105(a) and 365(a), for Entry of Order Authorizing Debtors to Reject Certain Executory Contracts and Unexpired Leases Nunc Pro Tunc to the Petition Date* (the "Motion to Reject"). The Motion to Reject seeks authorization from this Court to reject certain executory contracts and unexpired leases with Apple.

15. Also on the date hereof, GTAT filed its *Motion, Pursuant to Bankruptcy Code Sections 105(a) and 363(b), for Entry of Order (I) Authorizing Debtors to Wind Down Operations at Sapphire Manufacturing Facilities and (II) Approving Wind Down Employee Incentive Plan In Connection with Wind Down of Such Operations* (the "Wind Down Motion"). The Wind Down Motion seeks (i) authorization from this Court for GTAT to wind down its sapphire manufacturing facilities in Mesa, Arizona, and Salem, Massachusetts, and (ii) approval of a wind down employee incentive plan.

16. Also on the date hereof, GTAT filed its *Debtors' Emergency Motion for Expedited Hearing on Debtors' (I) Motion to Wind Down Certain Operations, (II) Motion to Reject Certain Executory Contracts and Unexpired Leases In Connection with Such Wind Down, (III) Motion to Seal Foregoing Motions and Supplemental First Day Declaration, and (IV) Motion to Seal the Sealing Motion* (the "Motion to Expedite"). The Motion to Expedite seeks an expedited hearing with respect to the Motion to Reject and the Wind Down Motion.

GTAT's Business

17. GTAT and its non-Debtor affiliates (collectively, the "GTAT Group") are leading manufacturers and suppliers of advanced materials and equipment for the global consumer electronics, power electronics, solar, and LED industries. The GTAT Group designs and sells high-quality sapphire production equipment and materials for a wide variety of domestic and international markets, including the consumer electronics market. In addition, the GTAT Group's historical business is based in the solar industry, where it is a leading provider of key polysilicon and photovoltaic equipment, services and technologies. The GTAT Group is also in the process of developing and commercializing additional equipment and products, including an ion implantation equipment tool and advanced solar cell metallization and interconnect technology. As of the Petition Date, the GTAT Group employs approximately 1,100 full-time employees in the United States and abroad, approximately 1,000 of whom work for the Debtors. The stock of GT is publicly traded under the symbol "GTAT".

18. As of June 28, 2014, the GTAT Group's unaudited and consolidated financial statements reflected assets totaling approximately \$1.5 billion and liabilities totaling approximately \$1.3 billion.

Confidentiality Obligations to Apple⁷

19. GTAT is subject to numerous Confidentiality Obligations to Apple. Among other things, GTAT Corp. and Apple are parties to that certain Confidentiality Agreement, dated as of August 24, 2012 (the “Confidentiality Agreement”),⁸ pursuant to which the parties agreed to keep certain information confidential (the “Confidential Information”), including “the terms and conditions of this Agreement, the nature of their business relationship, including, if applicable, the fact that one party provides or may provide goods or services to the other, and the parties’ discussions concerning the Project” as well as “any other nonpublic information which one party . . . discloses to the other party . . . in the course of their communications regarding the Project.”⁹

20. Critically, under the Statement of Work to Master Development and Supply Agreement, dated as of October 31, 2013 (the “SOW”),¹⁰ if GTAT breaches the Confidentiality Obligations set forth in, among other things, the Master Development and Supply Agreement, dated as of October 31, 2014 (which incorporates the obligations set forth in the Confidentiality Agreement),¹¹ “then GTAT will pay to Apple, as liquidated damages, an amount equal to **\$50 million per occurrence.**”¹²

21. Importantly, this liquidated damages provision is a “one-way” street; *it only benefits Apple in the event of a violation by GTAT, not the reverse.*

⁷ Under the terms of the confidentiality agreements between GTAT Corp. and Apple, GTAT Corp. is not even permitted to disclose the terms and conditions of such agreements.

⁸ A copy of the Confidentiality Agreement is attached hereto as Exhibit C.

⁹ See Confidentiality Agreement § 1.

¹⁰ A copy of relevant excerpts of the SOW is attached hereto as Exhibit D.

¹¹ See Attachment I to Master Development and Supply Agreement § 1. A copy of the relevant excerpts of the Master Development and Supply Agreement is attached hereto as Exhibit E.

¹² SOW § 6.2.

22. The Confidentiality Agreement, however, does permit the recipient of Confidential Information to disclose such information “**to the extent required by law**, provided Recipient makes reasonable efforts to give Discloser notice of such requirement prior to any such disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information.”¹³

RELIEF REQUESTED

23. GTAT seeks entry of one of two alternative orders. In the event that the Court determines that the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite should be sealed from public view under section 107(b) of the Bankruptcy Code (or if the Court is not prepared to direct GTAT to file unredacted versions thereof), GTAT has prepared a form of order, attached hereto as Exhibit A, authorizing GTAT to file unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite under seal. Alternatively, if the Court determines that the materials in the Supplemental First Day Declaration, the Motion to Reject, and the Wind Down Motion are not within the scope of the Confidentiality Obligations and/or fall outside the scope of section 107(b) of the Bankruptcy Code, GTAT requests that the Court enter an order, substantially in the form attached hereto as Exhibit B, **directing** GTAT to file unredacted versions thereof on the Court’s docket.

¹³ *Id.* § 2 (emphasis added).

BASIS FOR THE RELIEF REQUESTED

Bankruptcy Cases Are Generally Conducted in Public

24. The policy interest in favor of public access “is at its zenith when issues concerning the integrity and transparency of bankruptcy proceedings are involved.”¹⁴ This policy of open inspection, codified generally in section 107(a) of the Bankruptcy Code, evidences Congress’s strong desire to preserve the public’s right of access to judicial records in bankruptcy proceedings.¹⁵

25. Section 107(a) of the Code provides that all papers filed in the case and the dockets of a bankruptcy court “are public records and open to examination by an entity at reasonable times without charge.”¹⁶ The importance of the public’s right of access is widely recognized. As the First Circuit has noted:

[s]ection 107(a) is rooted in the right of public access to judicial proceedings, a principle long-recognized in the common law and buttressed by the First Amendment. This governmental interest is of special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system.¹⁷

26. The Bankruptcy Code also recognizes certain exceptions to the public access right under section 107(a), including that:

[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

¹⁴ *In re Food Mgmt. Group, LLC*, 359 B.R. 543, 553 (Bankr. S.D.N.Y. 2007); *see also Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 7 (1st Cir. 2005) (quoting *Fern v. U.S. Trustee (In re Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999) (stating that unrestricted access to bankruptcy records “fosters confidence among creditors regarding the fairness of the bankruptcy system”)).

¹⁵ *Orion*, 21 F.3d at 26.

¹⁶ 11 U.S.C. § 107(a).

¹⁷ *Gitto Global*, 422 F.3d at 7 (quoting *Fern v. United States Trustee (In re Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999)); *see also In re Blake*, 452 B.R. 1, 10 (Bankr. D. Mass. 2011) (Boroff, J.) (“presumption of public access to documents filed in a bankruptcy case is **paramount**”) (emphasis added); *Orion*, 21 F.3d at 26 (“policy of open inspection, codified generally in § 107(a) of the Bankruptcy Code, evidences congress’s [sic] strong desire to preserve the public’s right of access to judicial records in bankruptcy proceedings”).

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.¹⁸

27. These statutory exceptions, however, are narrowly construed.¹⁹ More to the point, they are much narrower than Apple's contractual prohibition against any disclosure about (a) the nature of GTAT's business relationship with Apple, (b) the fact that GTAT provides or may provide goods or services to Apple, (c) the parties' discussions concerning their transactions, as well as (d) "any other nonpublic information which one party . . . discloses to the other party . . . in the course of their communications regarding the Project."²⁰

28. The purpose of the exception under section 107(b)(1) is to protect business entities from disclosure of information "that could reasonably be expected to cause . . . [them] commercial injury."²¹ Consistent with that purpose, "commercial information" is considered to be information that would cause an "unfair advantage to competitors by providing them information as to the commercial operations."²²

¹⁸ 11 U.S.C. § 107(b). Section 107(c) provides a similar exception to protect individuals from undue risk of identity theft or other unlawful injury to the individual or the individual's property. Section 107(c) does not apply to the Debtors, as none of the Debtors is an individual.

¹⁹ See, e.g., *Blake*, 452 B.R. at 7 ("exceptions to [section 107(a)] are limited by specific statutory terms"); *In re FiberMark, Inc.* 330 B.R. 480, 506 (Bankr. D. Vt. 2005) ("courts have zealously upheld the public's right to access and narrowly construed the exceptions"); *Food Mgmt*, 359 B.R. at 554 ("[U]nless a paper filed in a bankruptcy court falls within one of the express exceptions in § 107(b) or (c), it must be open to public inspection.").

²⁰ See Confidentiality Agreement § 1.

²¹ *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003).

²² *Orion*, 21 F.3d at 27 (citation and quotation marks omitted). To fall within the exception under section 107(b)(2) (*i.e.*, scandalous or defamatory matter), "an interested party must show (1) that the material at issue would alter his reputation in the eyes of a reasonable person, and (2) that the material is untrue or that it is potentially untrue and irrelevant or included for an improper end." *Gitto Global*, 422 F.3d at 16. Of course, GTAT does not believe that anything in the Supplemental First Day Declaration qualifies as such, and, accordingly, the relief requested in this Motion is based solely on the exception under section 107(b)(1).

29. GTAT has redacted those portions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite that it believes may contain materials that are subject to the Confidentiality Obligations. Given the breadth of the Confidentiality Obligations, however, it is highly doubtful that much, if any, of this redacted information is the kind of “commercial information” that Congress elected to protect under section 107(b)(1). Nevertheless, disclosure of this information (absent contrary direction from this Court) would potentially expose GTAT Corp. to substantial liability to Apple for breach of the Confidentiality Obligations.

30. Accordingly, GTAT requests that the Court determine whether the redacted information in the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite falls within the scope of the protections in section 107(b)(1) and, if so, GTAT requests that the Court enter an order, substantially in form attached hereto as Exhibit A, authorizing GTAT to file unredacted copies of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite under seal.

If Redacted Information Is Not Protected By Section 107(b)(1), Then the Court Should Direct GTAT to File Unredacted Versions of Supplemental First Day Declaration, Motion to Reject, Wind Down Motion, and Motion to Expedite

31. As noted, GTAT Corp. faces the risk of \$50 million in liability—per occurrence—if it discloses information in violation of the Confidentiality Obligations. Importantly though, the relevant agreements with Apple permit GTAT Corp. to disclose confidential information to the extent *required by law*. GTAT believes that section 107(a) of the Bankruptcy Code requires full disclosure of the materials in the Supplemental First Day Declaration. However, absent express direction from the Court, GTAT will not risk exposing itself to potentially hundreds of millions of dollars in additional liabilities.

32. GTAT therefore requests that, to the extent that the Court determines that the redacted materials in the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite either (a) do not constitute information subject to the Confidentiality Obligation or (b) do not fall within the scope of section 107(b) of the Bankruptcy Code, the Court enter an order, pursuant to section 105(a)²³ and section 107(a) of the Bankruptcy Code, directing GTAT to file the unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite on the Court's docket.

33. While GTAT acknowledges that—at the urging of Apple and consistent with its obligation to Apple to take reasonable steps to obtain protective treatment of any information that Apple may consider to be confidential information—it previously submitted requests with regulatory agencies to have certain portions of its agreements with Apple treated confidentially for purposes of regulatory filings, the fact that such requests were made in that context should not control the outcome of *this Motion*. The primary purpose of those requests was to comply with GTAT's obligation to seek confidential treatment of information that Apple may consider confidential. Indeed, the information sought to be protected related to *specific* information that Apple deemed proprietary and confidential to it, including specifications of materials being manufactured and supplied, provisions regarding pricing and costs, and provisions governing the commercial relationship between Apple and GTAT. In contrast, GTAT believes that the information currently redacted from the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite does not contain any specific commercial information that merits protection under section 107(b). In any event, whether certain materials may have been treated confidentially in a different context does not control the

²³ Section 105(a) of the Bankruptcy Code codifies the bankruptcy court's equitable powers and authorizes it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

analysis under section 107(b). *See, e.g., In re Wyatt*, 368 B.R. 99, 102 (Bankr. D.N.H. 2007) (“the Court is constrained by section 107 and has no discretion to seal the docket simply because the probate court sealed its records”).

NOTICE

34. Notice of this Motion has been provided by email, facsimile or overnight courier to: (a) the Office of the United States Trustee for Region 1, 1000 Elm Street, Suite 605 Manchester, NH 03101, Attn: Geraldine L. Karonis; (b) the creditors holding the 30 largest unsecured claims against GTAT’s estates (on a consolidated basis); (c) the indenture trustee for the Debtors’ (i) 3.00% Convertible Senior Notes due 2017, and (ii) 3.00% Convertible Senior Notes due 2020, U.S. Bank National Association, 60 Livingston Avenue, St. Paul, MN 55107, Attn: Hazrat R. Haniff; (d) the Internal Revenue Service, 1000 Elm St., 9th Floor Manchester, NH 03101, Attn: District and Regional Directors; (e) U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; (f) Apple Inc., 1 Infinite Loop, Cupertino, CA 95014, Attn: Jessica L. Fink, Senior Restructuring Counsel; and (g) those parties who have formally filed requests for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

35. No previous request for the relief sought herein has been made by GTAT to this or any other court.

WAIVER OF MEMORANDUM OF LAW

36. GTAT requests that the Court waive and dispense with the requirement set forth in Rule 7102(b)(2) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of New Hampshire (“LBR”) that any motion filed shall have an accompanying memorandum of law. The legal authorities upon which GTAT relies are set forth in the Motion.

Accordingly, GTAT submits that a waiver of the LBR 7102(b)(2) requirement is appropriate under these circumstances.

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WHEREFORE, GTAT respectfully requests that the Court enter (a) an order, substantially in the form attached hereto as Exhibit A, sealing the unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite, or (b) in the alternative, an order, substantially in the form attached hereto as Exhibit B, directing GTAT to file the unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite on the Court's docket, and (c) granting GTAT such other and further relief as is just and proper.

Dated: October 10, 2014
Manchester, NH

/s/ Daniel W. Sklar

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Proposed Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A

**PROPOSED ORDER SEALING UNREDACTED VERSIONS OF
SUPPLEMENTAL FIRST DAY DECLARATION, MOTION TO REJECT, WIND
DOWN MOTION, AND MOTION TO EXPEDITE**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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In re: : **Chapter 11**
 :
 GT ADVANCED TECHNOLOGIES INC., *et al.*: **Case No. 14-11916-HJB**
 :
 Debtors.¹ :
 : **Joint Administration Requested**
 :
 -----X RE: Docket Nos. __

ORDER, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 107(b) AND BANKRUPTCY RULE 9018, AUTHORIZING FILING UNDER SEAL OF UNREDACTED VERSIONS OF SUPPLEMENTAL FIRST DAY DECLARATION, MOTION TO REJECT, WIND DOWN MOTION, AND MOTION TO EXPEDITE

Upon the motion (the "Motion")² of GT Advanced Technologies Inc. ("GT") and its affiliated debtors as debtors in possession (collectively, "GTAT" or the "Debtors") for (a) entry of an order, pursuant to section 107(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing GTAT to file under seal unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite or (b) in the alternative, and to the extent that the Court determines that the materials in the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite are not subject to confidentiality obligation or entitled to the protections of section 107(b) of the Bankruptcy Code, entry of an order, pursuant to sections 105(a) and 107(a) of the Bankruptcy

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Advanced Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors' corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Code, directing GTAT to file the unredacted versions thereof on the Court's docket, as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Supplemental First Day Declaration; and it appearing that the relief requested is in the best interests of GTAT's estates, its creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code section 107(b)(1) and Bankruptcy Rule 9018, GTAT is authorized and directed to file the unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite under seal, which shall remain under seal, confidential, and not made available to anyone, except for (i) the Court, (ii) the Office of the United States Trustee, and (iii) counsel to any official committee of unsecured creditors.
3. The requirement set forth in LBR 7102(b)(2) that any motion filed shall have an accompanying memorandum of law is waived.
4. GTAT is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2014
Manchester, NH

HONORABLE HENRY J. BOROFF
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

**PROPOSED ORDER DIRECTING DEBTORS TO FILE UNREDACTED VERSIONS OF
SUPPLEMENTAL FIRST DAY DECLARATION, MOTION TO REJECT, WIND
DOWN MOTION, AND MOTION TO EXPEDITE ON COURT'S DOCKET**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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: **Chapter 11**
: **Case No. 14-11916-HJB**
: **Jointly Administered**
: **RE: Docket Nos. __**
-----X

In re:
GT ADVANCED TECHNOLOGIES INC., *et al.*,
Debtors.¹

**ORDER, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 107(a),
DIRECTING DEBTORS TO FILE UNREDACTED VERSIONS OF SUPPLEMENTAL
FIRST DAY DECLARATION, MOTION TO REJECT, WIND DOWN MOTION, AND
MOTION TO EXPEDITE ON THE COURT'S DOCKET**

Upon the motion (the "Motion")² of GT Advanced Technologies Inc. ("GT") and its affiliated debtors as debtors in possession (collectively, "GTAT" or the "Debtors") for (a) entry of an order, pursuant to section 107(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing GTAT to file under seal unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite or (b) in the alternative, and to the extent that the Court determines that the materials in the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite are not subject to confidentiality obligation or entitled to the protections of section 107(b) of the Bankruptcy Code, entry of an order, pursuant to sections 105(a) and 107(a) of the Bankruptcy

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors' corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Code, directing GTAT to file the unredacted versions thereof on the Court's docket, as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Supplemental First Day Declaration; and it appearing that the relief requested is in the best interests of GTAT's estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code sections 105(a) and 107(a), GTAT is authorized and directed to file unredacted versions of the Supplemental First Day Declaration, the Motion to Reject, the Wind Down Motion, and the Motion to Expedite on the Court's docket.
3. The requirement set forth in LBR 7102(b)(2) that any motion filed shall have an accompanying memorandum of law is waived.
4. GTAT is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2014
Manchester, NH

HONORABLE HENRY J. BOROFF
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

CONFIDENTIALITY AGREEMENT

**APPLE INC.
CONFIDENTIALITY AGREEMENT (Mutual)**

This Confidentiality Agreement (the "Agreement") is entered into and is effective as of August 24, 2012 (the "Effective Date") by and between Apple Inc., 1 Infinite Loop, Cupertino, California 95014 ("Apple") and GTAT Corporation, d/b/a GT Advanced Technologies, located at 20 Trafalgar Square, Nashua, NH 03063 ("Company"), on behalf of themselves and their respective wholly-owned subsidiaries.

- 1. DEFINITION OF CONFIDENTIAL INFORMATION.** For their mutual benefit, the parties plan to discuss certain confidential information regarding Apple's evaluation and use of Company's goods, services and technologies in connection with Apple products (the "Project"). The parties agree that the terms and conditions of this Agreement, the nature of their business relationship, including, if applicable, the fact that one party provides or may provide goods or services to the other, and the parties' discussions concerning the Project will be considered confidential information covered by this Agreement ("Confidential Information"). In addition, any other nonpublic information which one party ("Discloser") discloses to the other party ("Recipient") in the course of their communications regarding the Project will be considered Confidential Information, including but not limited to nonpublic product plans, designs, costs, prices, names, finances, marketing plans, business opportunities, forecasts, orders, personnel, customer information, research, development, know-how, third party confidential information or information learned by Recipient from Discloser's employees, agents or through inspection of Discloser's property; provided such information is clearly designated as "Confidential": (i) in writing, if communicated in writing, or (ii) at the time of disclosure, if disclosed orally or visually. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of Recipient; (b) Recipient can demonstrate to have had rightfully in its possession prior to disclosure to Recipient by Discloser; (c) is independently developed by Recipient without the use of any Confidential Information; or (d) Recipient rightfully obtains from a third party who has the right to transfer or disclose it to Recipient without limitation. Nothing in this Agreement will obligate either party to disclose any Confidential Information.
- 2. NONDISCLOSURE AND NONUSE OF CONFIDENTIAL INFORMATION.** Recipient agrees to protect Discloser's Confidential Information, using at least the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. Company agrees to use Apple's Confidential Information for the sole purpose of evaluation in connection with the Project and discussions with Apple related to the Project, or as otherwise agreed upon in writing by an authorized representative of Apple. Recipient will not disclose, publish, or disseminate Confidential Information to anyone other than those of its employees (or to employees of any of its wholly-owned subsidiaries) and consultants who have a need to know in order to accomplish such purpose and who are bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information. In the event of disclosure to an employee of a wholly-owned subsidiary, a copy of this Agreement should be provided at the time of such disclosure to ensure the employees and consultants of such wholly-owned subsidiary understand the terms of this Agreement. Recipient will be responsible for any violation of

the terms of this Agreement by its employees and consultants, and employees of its wholly owned subsidiaries. Company agrees not to use Confidential Information for any other purpose or for its own or any third party's benefit without the prior written consent of an authorized representative of Apple in each instance. Recipient may disclose Confidential Information to the extent required by law, provided Recipient makes reasonable efforts to give Discloser notice of such requirement prior to any such disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information.

3. **NO LICENSE TO CONFIDENTIAL INFORMATION.** Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby and the Discloser retains all of its rights therein.
4. **FEEDBACK.** Subject to Section 2, above, if Recipient provides any ideas, suggestions or recommendations to Discloser regarding Discloser's Confidential Information ("Feedback"), Discloser is free to use and incorporate such Feedback in Discloser's products, without payment of royalties or other consideration to Recipient, so long as Discloser does not infringe Recipient's patents, copyrights or trademark rights in the Feedback. Nothing in this Agreement is intended to grant a license or waive any rights in either party's patents, copyrights or trademarks.
5. **INDEPENDENT DEVELOPMENT.** Discloser understands that Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to Discloser's Confidential Information. Nothing in this Agreement will prohibit Recipient from developing products, or having products developed for it, that compete with Discloser's products, provided that in doing so, Recipient does not use or disclose Discloser's Confidential Information.
6. **NO WARRANTY.** Discloser warrants that it has the right to disclose the Confidential Information to Recipient. Otherwise, all information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.
7. **RETURN OF DOCUMENTS.** Within ten (10) business days of receipt of Discloser's written request, and at Discloser's option, Recipient will either return to Discloser all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Discloser with written certification that all such tangible Confidential Information of Discloser has been destroyed.
8. **TERM AND TERMINATION.** Recipient's duty to protect Discloser's Confidential Information expires five (5) years from the date on which that Confidential Information was disclosed to Recipient. Either party may terminate this Agreement upon ten (10) days written notice; however, any termination of this Agreement shall not relieve Recipient of its confidentiality and use obligations with respect to Confidential Information disclosed prior to the date of termination.
9. **NO EXPORT.** Recipient may not use or otherwise export or reexport any portion of the Confidential Information except as authorized by United States law and the laws of the jurisdiction in which the Confidential Information was obtained. In particular, but without

limitation, the Confidential Information may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Persons List or Entity List. By using the Confidential Information, Recipient represents and warrants that Recipient is not located in any such country or on any such list. Recipient also agrees that Recipient will not use the Confidential Information for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons.

- 10. **NO IMPLIED WAIVER.** Neither party's failure or delay in exercising any of its rights will constitute a waiver of such rights unless expressly waived in writing.
- 11. **NO ASSIGNMENT.** This Agreement may not be assigned by either party by any means, including without limitation, by operation of law or merger, without the prior, written consent of the other party. Any attempted assignment of this Agreement in violation of this section will be void.
- 12. **ENTIRE AGREEMENT AND GOVERNING LAW.** This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed pursuant to this Agreement and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may not be amended except by written agreement signed by authorized representatives of both parties. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of California law concerning conflicts of law. The parties further submit to and waive any objections to the exclusive jurisdiction of and venue in any of the following forums: U.S. District Court for the Northern District of California, California Superior Court for Santa Clara County, or any other forum in Santa Clara County, for any litigation arising out of this Agreement.

Understood and agreed to by the authorized representatives of the parties:

Apple

Apple Inc.



By (Signature)

8/24/12

Date

Company

GTAT Corporation



By (Signature)

8/24/12

Date

VASHIST VASANTHAKUMARAN

AS M. MANAGER, iPhone operators

Hoil Kim, Vice President and General Counsel

Printed Name and Title

**COMPANY: RETURN TWO SIGNED ORIGINALS TO APPLE EMPLOYEE
APPLE EMPLOYEE: RETURN ONE SIGNED ORIGINAL TO APPLE LEGAL, M/S 36-4I**

EXHIBIT D

EXCERPTS OF SOW

APPLE CONFIDENTIAL
#C56-13-02947

APPLE INC.
STATEMENT OF WORK #1
to
MASTER DEVELOPMENT AND SUPPLY AGREEMENT
C56-13-02947

Apple Inc. ("*Apple*") and GTAT Corporation ("*GTAT*") entered into Master Development and Supply Agreement #C56-13-02947 effective as of October 31, 2013 (the "*Agreement*" or "*MDSA*"). Apple may purchase the Goods described in this Statement of Work #1 ("*SOW*"), and GTAT and any GTAT affiliates authorized to provide such Goods agree to manufacture and deliver such Goods, all in accordance with the terms set forth in this SOW and the MDSA. This SOW is effective as of October 31, 2013 ("*Effective Date of the SOW*").

PURPOSE

Apple and GTAT are entering into this SOW and the rest of the Collateral Agreements (as defined below) pursuant to which: (i) Apple will design and build the Mesa Facility that it will lease to GTAT; (ii) GTAT will grow and process sapphire boules into Goods which it will sell to Apple; (iii) Apple will make a prepayment to GTAT to fund the purchase of Furnaces (as defined in Section 1.6 below) and Equipment used to make the Goods and (iv) GTAT will grant Apple a security interest and provide Apple with other protective rights in recognition of Apple's investment in the Mesa Facility and Apple's prepayment to GTAT. In connection with the foregoing, Apple and GTAT, or Apple's or GTAT's Related Entities, as applicable, are entering or will enter into the following agreements (collectively, the "*Collateral Agreements*"):

- (a) this SOW;
- (b) MDSA;
- (c) Intellectual Property Agreement among Apple, GTAT, GT Advanced Technologies Limited, GT Sapphire Systems Holding LLC and GT Sapphire Systems Group LLC;
- (d) Prepayment Agreement between Apple and GTAT, dated as of the Effective Date of the SOW (the "*Prepayment Agreement*") and all exhibits and attachments thereto;
- (e) Membership Interest Pledge Agreement between Apple and GTAT, dated as of the Effective Date of the SOW (the "*Pledge Agreement*") and all exhibits and attachments thereto; and
- (f) Mesa Facility Lease Agreement between Platypus Development LLC and GTAT, dated as of the Effective Date of the SOW (the "*Mesa Facility Lease Agreement*") and all exhibits and attachments thereto.

AGREEMENT

Any capitalized terms used in this SOW will have the meanings assigned them in this SOW, or, if not defined in this SOW, those assigned them in the MDSA. In the event of any conflicting terms, the order of precedence will be terms of (i) the Prepayment Agreement, (ii) the Pledge Agreement, (iii) the Intellectual Property Agreement, (iv) this SOW, (v) the MDSA and (vi) the Mesa Facility Lease Agreement.

For purposes of this SOW, "*Goods*" mean (i) sapphire Bricks meeting the Specification provided by Apple to GTAT, (ii) other goods specified by Apple that are capable of being produced using the

APPLE CONFIDENTIAL
#C56-13-02947

- 5.12 The Apple Equipment provided by Apple is provided to GTAT "as is" and Apple disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.
- 5.13 GTAT is solely responsible for installing, testing, and maintaining Apple Equipment in its control in good working condition in compliance with applicable manufacturing specifications, for purchasing and maintaining spare parts to repair such Apple Equipment with a minimum of downtime, and for any risk of loss in connection with the Apple Equipment.
- 5.14 Apple reserves the right to inspect any Apple Equipment in GTAT's control at any time. Apple reserves all its rights and remedies under MDSA, this SOW, the Uniform Commercial Code and all other applicable laws, including, but not limited to, the right to lawfully enter the premises of GTAT and take possession as bailor of any and all Apple Equipment at any time without breach of the peace.

6. Liquidated Damages.

- 6.1 Without limiting the foregoing or any other remedies available to Apple: (i) on the fourth calendar day following the required delivery date for any Goods, GTAT will remit to Apple the applicable amount set forth in the table below for each quantity of Goods that has not been delivered prior to such fourth calendar day; and (ii) on the fifth calendar day following the required delivery date for any Goods, GTAT will remit to Apple the additional applicable amount set forth in the table below for each quantity of Goods that has not been delivered prior to such fifth calendar day. The foregoing remedy is non-exclusive and Apple will be entitled to pursue any other legal or equitable remedies.

Good	4 th Day Late	5 th Day Late
Boule	\$320,000	\$320,000
Brick Good material	\$77/mm	\$77/mm

- 6.2 Without limiting the foregoing or any other remedies available to Apple: If GTAT or any applicable GTAT Related Entities breaches the confidentiality obligations set forth in the MDSA, Apple Restricted Information Agreement or Apple Restricted Project Agreement, then GTAT will pay to Apple, as liquidated damages, an amount equal to \$50 million per occurrence. The foregoing remedy is non-exclusive and Apple will be entitled to pursue any other legal or equitable remedies.
- 6.3 Without limiting the foregoing or any other remedies available to Apple: If GTAT, any of its affiliates, distributors or channel partners or customers violates the exclusivity obligations set forth in Section 9.1 herein, GTAT will pay to Apple, as liquidated damages, an amount equal to \$640,000 for each sapphire boule produced and used in connection with a violation of the exclusivity obligations set forth in Section 9.1. In addition, if GTAT, or any GTAT Related Entities, supply (whether by sale, lease or otherwise) sapphire growth furnaces or sapphire growth or production services to any entity in breach of the restrictions set forth in Section 9.1, GTAT will pay, as additional liquidated damages, an amount equal to \$650,000 per month per furnace until such furnace is permanently shut down. The foregoing remedies are non-exclusive and Apple will be entitled to pursue any other legal or equitable remedies.
- 6.4 Without limiting the foregoing or any other remedies available to Apple: If a Key Employee is not replaced by a suitably qualified individual in accordance with Section 11 below, then

EXHIBIT E

EXCERPTS OF MASTER DEVELOPMENT AND SUPPLY AGREEMENT

APPLE INC.
MASTER DEVELOPMENT AND SUPPLY AGREEMENT

This Master Development and Supply Agreement #C56-13-02947 (the "*Agreement*") is entered into by and among **Apple Inc.**, a California corporation having its principal place of business at 1 Infinite Loop, Cupertino, California 95014, United States ("*Apple*") and **GTAT Corporation**, having its principal place of business at 243 Daniel Webster Highway, Merrimack, NH 03054 ("*GTAT*"), effective as of October 31, 2013 (the "*Effective Date*").

1. **Scope.** This Agreement relates to goods that GTAT will develop, manufacture, sell and deliver to Authorized Purchasers (as defined below) for use in connection with Apple's products (collectively, the "*Goods*"). The parties may enter into statements of work (each, a "*Statement of Work*" or "*SOW*") in the future to address additional details related to specific Goods.
2. **Forecast.** Apple will periodically provide written forecasts indicating Apple's projected demand for each Good (each such forecast, a "*Forecast*"). GTAT will accept each such Forecast upon receipt provided it is consistent with the applicable Flexibility Schedule, if any, in an SOW. GTAT will timely commence the manufacture of Goods in order to deliver the Goods by the dates indicated in each Forecast. "*Flexibility Schedule*" means a schedule that sets forth the maximum percentage increase in units forecasted or ordered, based on when notice of such increase is given.
3. **Pricing.** Apple and GTAT will mutually agree on pricing for Goods. In addition to any agreed upon prices, the per unit price for a Good will not exceed 95% of the lowest price GTAT offers to any other customer for similar Goods, net of rebates, discounts and other payments, and regardless of volume.
4. **Purchase Orders.**
 - 4.1. GTAT will accept and timely fulfill all Purchase Orders that Apple or any entity Apple authorizes to procure Goods under this Agreement (Apple and each of the foregoing entities, an "*Authorized Purchaser*") issues by the delivery date requested in such Purchase Order so long as the number of Goods indicated does not exceed the quantity specified in the applicable Forecast with respect to the relevant delivery period. "*Purchase Order*" means an Authorized Purchaser's written or electronically transmitted instruction to GTAT to deliver particular Goods pursuant to applicable delivery or performance dates and locations.
 - 4.2. Authorized Purchasers may, without charge, (i) cancel any Purchase Order, or any portion thereof; or (ii) reschedule the shipment date of undelivered Goods and/or redirect shipments of Goods to alternate locations.
 - 4.3. Unless mutually agreed in writing otherwise, all Purchase Orders will be governed by the terms and conditions of this Agreement and any applicable SOW. As between Apple, its Related Entities and GTAT, any different or additional terms in any proposal, acknowledgement form or any other document will be of no force or effect and will not become part of the agreement between the parties. GTAT will not enter into any agreement with any Authorized Purchaser in connection with the Goods on terms less favorable to such Authorized Purchaser than those in this Agreement. Further, if GTAT or an Authorized Purchaser seeks, but fails within 90 days, to enter into such an agreement, then GTAT will promptly notify Apple of the circumstances.
 - 4.4. GTAT may not invoice for Goods until after delivery. Payment terms are 45 days from the date an Authorized Purchaser receives an undisputed invoice. All amounts payable will be stated and paid in United States Dollars.
 - 4.5. Authorized Purchasers are not obligated to purchase any Goods except pursuant to a Purchase Order it issues. Except for amounts due pursuant to a Purchase Order or SOW, Authorized Purchasers will not be responsible for any costs in connection with the supply or purchase of any Goods.

ATTACHMENT 1

General Terms and Conditions

1. **Confidentiality.** All disclosures of Confidential Information arising out of or related to this Agreement will be governed by the terms of the parties' existing Confidentiality Agreement, dated August 24, 2012.
2. **Press Releases and Publicity.** Neither Apple nor GTAT will issue press releases or other publicity regarding the Agreement or its subject matter without the prior written approval of the other.
3. **Compliance with Laws.** GTAT agrees that it will fully comply with all applicable laws and regulations in performing its obligations under the Agreement. GTAT agrees that it will not export, re-export, sell, resell or transfer any customer data or any export-controlled commodity, technical data or software (i) in violation of any law, regulation, order, policy or other limitation imposed by the United States (including the United States Export Administration regulations) or any other government authority with jurisdiction; or (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent.
4. **Anti-Corruption.** GTAT has reviewed and understands Apple's policies with respect to ethical business conduct and agrees to fully comply with all such policies. GTAT will comply with all applicable laws and regulations enacted to combat bribery and corruption, including the United States Foreign Corrupt Practices Act, the UK Bribery Act, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials and any corresponding laws of all countries where business or services will be conducted or performed pursuant to the Agreement (collectively, the "*Anti-Corruption Laws*"). GTAT and, to the best of GTAT's knowledge, its subsidiaries and affiliates, have conducted their businesses in compliance with the Anti-Corruption Laws. GTAT will not Knowingly, directly or indirectly pay, offer, promise, or give anything of value (including any amounts paid or credited by Apple to GTAT) to any person or party, to influence any act or decision by such person or party for the purpose of obtaining, retaining, or directing business to Apple. "*Knowingly*" means (i) the actual knowledge of GTAT's executive officers or employees, or (ii) the knowledge that GTAT's executive officers and employees should reasonably be expected to have or (iii) the existence of a reasonable belief of GTAT's executive officers or employees. Any amounts paid by Apple to GTAT under the Agreement will be for services actually rendered, or Goods sold, by GTAT (as applicable). Additionally, to the extent permitted by law, GTAT will notify Apple if an owner, partner, officer, director or employee of GTAT who is assigned to a current or prospective Apple account as an account representative or account manager (or any similar such position) has been, or will become, an official or employee of a governmental entity or political party or a candidate for political office. GTAT represents and warrants that all information provided to Apple in connection with Apple's selection and approval of GTAT as an Apple vendor, or at any other time during the term of the Agreement, is complete and true.
5. **Right to Offset.** Apple may, from time to time, set-off or recoup any amounts due from GTAT or any GTAT Related Entity to Apple or any Apple Related Entity, against any amounts due from Apple or any Apple Related Entity to GTAT or any GTAT Related Entity. If required by applicable law, Apple will give GTAT notice that Apple has effected a set-off or recoupment, within a reasonable time thereafter via email or any other reasonable means that Apple selects, and GTAT agrees that any such notice will be effective when given, even if a receiver, custodian, trustee, examiner, liquidator or similar official has been appointed for GTAT, the applicable GTAT Related Entity, or any substantial portion of the assets thereof. The rights described in this paragraph are in addition to any other rights and remedies available under this Agreement or applicable law, including, for example, the right to deduct damages from any amount payable to GTAT or any GTAT Related Entity. "*Related Entity*," as applied to both Apple and GTAT, includes any subsidiary or affiliate and further includes any corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other business entity that controls, is controlled by, or is under common control with an entity, where "control" means that the entity possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.
6. **Insurance and Loss Prevention.** GTAT will comply with the requirements specified in Attachment 4 hereto.